

10-22-2015

Hammer v. City of Sun Valley Clerk's Record v. 5 Dckt. 43079

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/
idaho_supreme_court_record_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

Recommended Citation

"Hammer v. City of Sun Valley Clerk's Record v. 5 Dckt. 43079" (2015). *Idaho Supreme Court Records & Briefs, All*. 6592.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/6592

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs, All by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

Vol. 5 of 9
FINE COURT OF THE C

VS.

Defendants/Respondent s

43079

VOLUME 5

LAW CLERK

Appeal from the District Court of the Fifth Judicial District
of the State of Idaho, in and for the County of Blaine.

HONORABLE JONATHAN BRODY, DISTRICT JUDGE

Attorney for Plaintiff/Appellant

Attorney for Defendants/Respondents

43079

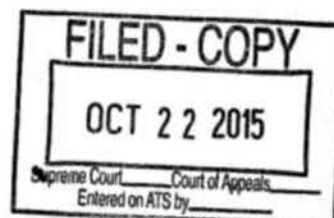


TABLE OF CONTENTS

Declaration of Kirtlan G. Naylor CONT. <i>(NOTE: EXH A & B not filed in the District Court)</i>	11/18/2014	909
Plaintiff's Motion for Summary Judgment	11/18/2014	996
Memorandum in Support of Plaintiff's Motion for Summary Judgment	11/18/2014	998
Affidavit of Sharon R. Hammer in Support of Plaintiff's Motion for Summary Judgment	11/18/2014	1016
Affidavit of James R. Donoval in Support of Plaintiff's Motion for Summary Judgment	11/18/2014	1031
Affidavit of Wayne Willich in Support of Plaintiff's Motion for Summary Judgment	11/18/2014	1042
Affidavit of Counsel in Support of Plaintiff's Motion for Summary Judgment	11/18/2014	1046

INDEX

Affidavit of Counsel in Support of Plaintiff's Motion for Summary Judgment	11/18/2014	1046
Affidavit of James R. Donoval in Support of Plaintiff's Motion for Summary Judgment	11/18/2014	1031
Affidavit of Sharon R. Hammer in Support of Plaintiff's Motion for Summary Judgment	11/18/2014	1016
Affidavit of Wayne Willich in Support of Plaintiff's Motion for Summary Judgment	11/18/2014	1042
Declaration of Kirtlan G. Naylor CONT. <i>(NOTE: EXH A & B not filed in the District Court)</i>	11/18/2014	909
Memorandum in Support of Plaintiff's Motion for Summary Judgment	11/18/2014	998
Plaintiff's Motion for Summary Judgment	11/18/2014	996

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF IDAHO

3 ----- x Case No. 1:13-cv-211-EJL

4 SHARON R. HAMMER and JAMES R.
5 DONOVAL, husband and wife,

6 Plaintiffs,

7 vs.

8 CITY OF SUN VALLEY, NILS RIBI, in his :
9 individual and official capacity, and :
10 DeWAYNE BRISCOE, in his individual :
11 and official capacity,

12 Defendants.

13 ----- x

14 VIDEOTAPED DEPOSITION OF SHARON R. HAMMER

15 March 18, 2014

16
17 VOLUME 1
18 Pages 1 - 198

19
20 Reported by
21 Brooke R. Bohr
22 CSR No. 753
23
24
25

Page 2

1 VIDEOTAPED DEPOSITION OF SHARON R.
2 HAMMER, taken at the instance of the Defendants,
3 at the law offices of NAYLOR & HALES, PC,
4 950 W. Bannock, Suite 610, in the City of Boise,
5 State of Idaho, commencing at 9:06 a.m., on
6 March 18, 2014, before Brooke R. Bohr, CSR, RPR, a
7 Notary Public in and for the State of Idaho,
8 pursuant to notice, and in accordance with the
9 applicable Rules of Civil Procedure.

12 APPEARANCES

13 FOR PLAINTIFFS

Eric B. Swartz
14 JONES & SWARTZ, PLLC
15 1673 W. Shoreline Drive, Suite 200
Boise, ID 83702
(208) 489-8989
16 eric@jonesandswartzlaw.com

17 FOR DEFENDANTS

Kirtlan G. Naylor
18 Jacob H. Naylor
NAYLOR & HALES
19 950 W. Bannock Street, Suite 610
Boise, ID 83702
20 (208) 383-9511
kirt@naylorhales.com
21
22
23
24
25

Page 3

1 WITNESS

2 SHARON R. HAMMER Page:

3 Examination by Mr. Naylor 5

4 *****

6 EXHIBITS

7 Page:

8 1 Notice of Taking Deposition 5
9 2 Amended Notice of Taking
Deposition 6

10
11 3 E-mail Chain 48
12 4 E-mail Chain 58
13 5 E-mail 66
14 6 E-mail 73
15 7 City of Sun Valley Letter 82
16 8 Verified Complaint 137
17 9 Resume 154
18 10 Use of City Vehicle Policy 167
19 11 Authorization for Release of
Personal Information 172

20 12 Charge of Discrimination 174

21 13 E-mail 179

22 14 E-mail Chain 180

23 15 City of Sun Valley Credit Card 182
24 Policy
25 *****

Page 4

1 BOISE, IDAHO
2 March 18, 2014, 9:06 a.m.

3
4 THE VIDEOGRAPHER: On the record.
5 My name is Ron Attard. I'm the
6 videographer. I'm with John Glenn Hall Company,
7 whose business address is Post Office Box 2683,
8 Boise, Idaho.

9 This is the matter of Sharon Hammer and
10 James Donoval vs. City of Sun Valley, et al., in
11 the -- this deposition is being made on behalf of
12 the defendants. This is in the District Court --
13 United States District Court of the District of
14 Idaho for the District of Idaho.

15 Today's date is March 18th, 2014. The
16 time is approximately 9:05 a.m. The location of
17 the deposition is in the offices of Naylor &
18 Hales, 950 West Bannock in Boise, Idaho. The
19 deponent's name is Sharon Hammer.

20 Now other counsel will identify
21 themselves and then we'll swear in the witness.

22 MR. NAYLOR: Kirtlan Naylor for the
23 defendants.

24 MR. SWARTZ: Eric Swartz for the plaintiffs.
25

1 (Pages 1 to 4)

Page 185

1 total amount makes me uncomfortable because it
 2 appears excessive. Has a policy on food purchases
 3 ever existed or been discussed."
 4 That's not documentation. That's an
 5 actual purchase you were concerned about, right?
 6 A. What's your question?
 7 Q. You were concerned about the amount
 8 of that purchase as being excessive, weren't
 9 you?
 10 A. That is what I've stated in the
 11 E-mail.
 12 Q. Now, were you familiar with --
 13 while you were the City administrator for the
 14 City of Sun Valley, were you familiar with the
 15 antiharassment guidelines of the personnel
 16 manual?
 17 A. I reviewed them while I was the City
 18 administrator.
 19 Q. Were you familiar with them while you
 20 were the City administrator?
 21 A. I don't know what you mean by
 22 "familiar."
 23 Q. Well, isn't it true that you knew the
 24 City of Sun Valley personnel, the policies and
 25 procedures, correct?

Page 187

1 Q. Okay. Did you follow it?
 2 A. As I sit here today, I don't recall
 3 what it says word for word.
 4 Q. And you claim that Nils Ribí harassed
 5 you; is that correct?
 6 A. He did harass me.
 7 Q. And what was the nature of the
 8 harassment?
 9 A. Those allegations are in the complaint.
 10 Q. What do you remember about those
 11 allegations as you sit here today? What was the
 12 nature of his harassment?
 13 A. Do you have a specific question?
 14 Q. What was the nature of the harassment
 15 that you claim Nils Ribí did?
 16 A. The bigger incidents are in the
 17 complaint. The nature of his harassment was to
 18 try to intimidate me into doing what he wanted me
 19 to do. He had a pattern of coming by City Hall
 20 during the lunch hour when he knew that the mayor
 21 and most of the other City employees were not in
 22 City Hall. He would stand in my doorway and try
 23 to intimidate me into doing things that had -- I
 24 had not been directed to do by the mayor. When I
 25 would suggest that he talk to the mayor, because

Page 186

1 A. What's your question?
 2 Q. Didn't you know -- you were familiar
 3 with the Sun Valley City policies while you were
 4 the City administrator?
 5 A. I don't know what you mean by that.
 6 I'm sorry.
 7 Q. Well, we'll get to that document later.
 8 But there's a document that says that as the City
 9 administrator, essentially, I'm paraphrasing, you
 10 have the ultimate and final authority to interpret
 11 all City policies, even above the mayor. Do you
 12 remember saying that in a memo?
 13 A. I don't remember it verbatim. I do
 14 remember something like that in the personnel
 15 policies.
 16 Q. So, in essence, you would have to be
 17 familiar with those policies in order to interpret
 18 those, correct?
 19 MR. SWARTZ: Objection; foundation,
 20 argumentative.
 21 THE WITNESS: So what's your question?
 22 Q. BY MR. NAYLOR: Did you know that
 23 there was a City of Sun Valley harassment,
 24 antiharassment policy and guideline?
 25 A. I think I said I reviewed it.

Page 188

1 it was very -- made very clear to me that my
 2 direction came from the mayor, he got very
 3 agitated. He would raise his hands and lean
 4 through the doorway and shake his hands and say,
 5 "No. No. You don't understand." He yelled at me
 6 that the mayor did not know what his job was.
 7 Q. That the mayor did not know whose job
 8 was?
 9 A. What his job was.
 10 Q. When you say "his job," what are you
 11 talking about?
 12 A. That Mayor Willich did not know what
 13 his job was.
 14 Q. That Mayor Willich did not know what
 15 Mayor Willich's job was?
 16 A. Yes.
 17 Q. You said that he would intimidate you.
 18 How would he intimidate you?
 19 A. His behavior became erratic and more
 20 volatile during the period of time when I was at
 21 the City.
 22 Q. Did you know him before the time you
 23 were at the City?
 24 A. Did I know him?
 25 Q. Yeah.

47 (Pages 185 to 188)

<p style="text-align: right;">Page 189</p> <p>1 A. No.</p> <p>2 Q. I don't quite understand what you just</p> <p>3 said. His behavior became more erratic during the</p> <p>4 time when you were at the City?</p> <p>5 A. So initially in 2008 --</p> <p>6 Q. Um-hum.</p> <p>7 A. -- it wasn't -- I don't recall too</p> <p>8 many incidents then. But as time went on, and</p> <p>9 particularly after he was reelected and he knew</p> <p>10 that Mayor Willich would have to go through an</p> <p>11 election, his behavior became more aggressive</p> <p>12 towards me.</p> <p>13 Q. When you say "aggressive," in what</p> <p>14 way?</p> <p>15 A. More demanding. He would call me</p> <p>16 on the telephone and be very, very angry over</p> <p>17 something that was going on and yell at me.</p> <p>18 Q. When you say he was "demanding," what</p> <p>19 types of things was he demanding?</p> <p>20 A. Well, the bigger complaints -- the</p> <p>21 bigger incidents are in the complaint.</p> <p>22 Q. I'm just asking what you recall today.</p> <p>23 A. There were many.</p> <p>24 Q. And when you say "demanding," what</p> <p>25 types of things was he demanding? Just give me an</p>	<p style="text-align: right;">Page 190</p> <p>1 example.</p> <p>2 A. How I spent my time as a City</p> <p>3 administrator working on particular projects that</p> <p>4 he wanted me to work on when I had received no</p> <p>5 direction from the mayor.</p> <p>6 Q. Were any of these demands by Mr. Ribi</p> <p>7 unrelated to your work as the City administrator?</p> <p>8 A. My job and what I did was defined by</p> <p>9 the mayor.</p> <p>10 Q. Were any of these demands by Mr. Ribi</p> <p>11 unrelated to your work as the City administrator?</p> <p>12 A. My job was defined to me by the</p> <p>13 mayor and what -- how I should spend my time.</p> <p>14 Councilman Ribi tried to direct my time into other</p> <p>15 areas that I had not received direction from the</p> <p>16 mayor. And when I would refer him back to the</p> <p>17 mayor to go talk to the mayor and work it out or</p> <p>18 talk to the council, he became very agitated.</p> <p>19 And it -- over time, his behavior became more</p> <p>20 aggressive to me, and it started to frighten me.</p> <p>21 Q. Okay. Let me go back to what he was</p> <p>22 demanding. You're saying that -- is it true that</p> <p>23 anything he was demanding was related in some way</p> <p>24 to the City of Sun Valley?</p> <p>25 A. That's not the same question that you</p>
<p style="text-align: right;">Page 191</p> <p>1 asked before. So ask it again, and I'll answer</p> <p>2 it.</p> <p>3 Q. With regard to when you say he was</p> <p>4 demanding, isn't it true that anything he was</p> <p>5 demanding was related in some way to the business</p> <p>6 of the City of Sun Valley?</p> <p>7 A. I don't recall sitting here today</p> <p>8 anything that wasn't related to the business of</p> <p>9 the City of Sun Valley, but it would be most --</p> <p>10 there were occasions where he was directing me to</p> <p>11 use my time where I had not been directed to do</p> <p>12 that by the mayor.</p> <p>13 Q. Are you saying that you were -- you</p> <p>14 only did tasks as directed by Mayor Willich?</p> <p>15 A. When it got to the point where I felt</p> <p>16 it was a problem with him trying to direct my</p> <p>17 time, I felt that I needed to refer him back to</p> <p>18 Mayor Willich.</p> <p>19 Q. My question -- go ahead.</p> <p>20 A. Initially, in the early years, I tried</p> <p>21 very hard to build a positive relationship with</p> <p>22 him, as well as the other council members.</p> <p>23 Q. Are you saying that you were only --</p> <p>24 that you only did tasks that were assigned to you</p> <p>25 directly by Mayor Willich?</p>	<p style="text-align: right;">Page 192</p> <p>1 A. No.</p> <p>2 Q. Okay. So you had some flexibility to</p> <p>3 perform your responsibilities as the City</p> <p>4 administrator, correct?</p> <p>5 A. I'm sorry. What was your question?</p> <p>6 Q. You had flexibility to do what you</p> <p>7 needed to do to get your job done as the City</p> <p>8 administrator, right?</p> <p>9 A. I had some flexibility.</p> <p>10 Q. And on occasion, city council members</p> <p>11 might need a document, like a budget or some City</p> <p>12 document to review, wouldn't they?</p> <p>13 A. What's your question?</p> <p>14 Q. Wouldn't city council members come to</p> <p>15 you and say that they needed some document to</p> <p>16 review, maybe a budget document?</p> <p>17 A. Not all of them.</p> <p>18 Q. But some of them would?</p> <p>19 A. Some of them would on occasion.</p> <p>20 Nils Ribi was not occasionally.</p> <p>21 Q. But my question is did he ever ask for</p> <p>22 anything that was inappropriate for a city council</p> <p>23 member to review?</p> <p>24 A. I don't recall. I can't even think of</p> <p>25 what would be an inappropriate document for a</p>

<p style="text-align: right;">Page 197</p> <p>1 VERIFICATION</p> <p>2</p> <p>3 STATE OF IDAHO)</p> <p>4)</p> <p>5 County of Ada)</p> <p>6 I, SHARON R. HAMMER, being first duly</p> <p>7 sworn on my oath, depose and say:</p> <p>8 That I am the witness named in the</p> <p>9 foregoing deposition, taken on March 18, 2014,</p> <p>10 consisting of pages numbered 1 to 198, inclusive;</p> <p>11 That I have read the said deposition and</p> <p>12 know the contents thereof; that the questions</p> <p>13 contained therein were propounded to me; that the</p> <p>14 answers to said questions were given by me, and</p> <p>15 that the answers as contained therein (or as</p> <p>16 corrected by me therein) are true and correct.</p> <p>17</p> <p>18 DEPONENT</p> <p>19</p> <p>20 Signed and sworn before me this of , .</p> <p>21 NOTARY PUBLIC</p> <p>22 Residing at</p> <p>23 My commission expires</p> <p>24</p> <p>25 Job No. 28140</p>	<p style="text-align: right;">Page 198</p> <p>1 REPORTER'S CERTIFICATE</p> <p>2</p> <p>3</p> <p>4 I, BROOKE R. BOHR, a Notary Public in</p> <p>5 and for the State of Idaho, do hereby certify:</p> <p>6 That prior to being examined, the</p> <p>7 witness named in the foregoing deposition was by</p> <p>8 me duly sworn to testify the truth, the whole</p> <p>9 truth, and nothing but the truth;</p> <p>10 That said deposition was taken down by</p> <p>11 me in shorthand at the time and place therein</p> <p>12 named and thereafter reduced into typewriting</p> <p>13 under my direction, and that the foregoing</p> <p>14 transcript contains a full, true, and verbatim</p> <p>15 record of the said deposition.</p> <p>16 I further certify that I have no</p> <p>17 interest in the event of the action.</p> <p>18 WITNESS my hand and seal April 1, 2014.</p> <p>19</p> <p>20</p> <p>21 NOTARY PUBLIC in and for the State of Idaho;</p> <p>22 residing at Meridian, Idaho.</p> <p>23</p> <p>24 My commission expires September 7, 2019.</p> <p>25 CSR No. 753</p>

50 (Pages 197 to 198)

Tucker & Associates, 605 W. Fort St., Boise, ID 83702 (208) 345-3704

EXHIBIT H

912

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

SHARON R. HAMMER and JAMES R.
DONOVAL, husband and wife,

Plaintiffs,

v.

CITY OF SUN VALLEY; NILS RIBI, in
his individual and official capacity; and
DEWAYNE BRISCOE, in his individual
and official capacity,

Defendants.

Case No. 1:13-CV-00211-EJL

**MEMORANDUM DECISION AND
ORDER**

Pending before the Court in the above-entitled matter are Defendants' Motion for Judgment on the Pleadings and Plaintiffs' Motion to Convert. The parties have filed responsive briefing and the matters are ripe for the Court's consideration. Having fully reviewed the record herein, the Court finds that the facts and legal arguments are adequately presented in the briefs and record. Accordingly, in the interest of avoiding further delay, and because the Court conclusively finds that the decisional process would not be significantly aided by oral argument, the Motions shall be decided on the record before this Court without oral argument.

MEMORANDUM DECISION AND ORDER - 1

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs Sharon R. Hammer and James R. Donoval, husband and wife, filed the Complaint against Defendant City of Sun Valley ("Sun Valley" or "the City") as well as Defendants Nils Ribí and DeWayne Briscoe in both their individual and official capacity. (Dkt. 1.) Mr. Ribí served as an elected City Council Member from January of 2006 to January of 2014 and was City Council President from 2008 through 2009. Mr. Briscoe is the current elected Mayor of Sun Valley as of January 3, 2012. Prior to that, since January of 2008, Mr. Briscoe was also an elected member of the City Council. Mr. Briscoe served as City Council President from January 2010 to January of 2012. The claims raised in the Complaint are:

- Count 1 Gender Discrimination and Harassment, Idaho Code §§ 67-5901, *et seq.*, against Sun Valley;
- Count 2 Retaliation, Idaho Code §§ 67-5901, *et seq.*, against Sun Valley;
- Count 3 Retaliation Freedom of Speech, 42 U.S.C. § 1983, against all Defendants;
- Count 4 Retaliation Access to the Courts, 42 U.S.C. § 1983, against all Defendants;
- Count 5 Retaliatory Investigation, 42 U.S.C. § 1983, against all Defendants;
- Count 6 Retaliation against the Plaintiffs'¹ Right to Intimate and Political Association, 42 U.S.C. § 1983, against all Defendants;
- Count 7 Deprivation of Property, 42 U.S.C. § 1983, against all Defendants;

¹ All of the claims in the Complaint are alleged to have occurred against Ms. Hammer with the exception of the Sixth Cause of Action for retaliation which is claimed to have occurred against both Ms. Hammer and Mr. Donoval. (Dkt. 1.)

- Count 8 Unconstitutional Bias Deprivation of Property, 42 U.S.C. § 1983, against all Defendants;
- Count 9 Deprivation of Due Process, 42 U.S.C. § 1983, against all Defendants;
- Count 10 Civil Conspiracy, 42 U.S.C. §§ 1983, 1985, against all Defendants;
- Count 11 Assault of Ms. Hammer against Mr. Ribí individually;
- Count 12 Wrongful Termination of Ms. Hammer against all Defendants;
- Count 13 Breach of Contract against all Defendants;
- Count 14 Negligent Infliction of Emotional Distress against Defendants Ribí and Briscoe.

(Dkt. 1.) The claims relate to events occurring during Ms. Hammer's employment as the City Administrator of Sun Valley from June 1, 2008 until January 19, 2012. During that time, Plaintiffs allege that Ms. Hammer was repeatedly and continuously harassed, physically and emotionally intimidated, verbally abused, and assaulted by Mr. Ribí. Ms. Hammer asserts she reported these incidents to City authorities. In retaliation, Plaintiffs argue, Mr. Ribí and others trumped up allegations of misconduct by Ms. Hammer resulting in her twice being placed on administrative leave pending an independent internal investigation and ultimately terminated. Plaintiffs further argue Mr. Ribí acted with hostility towards them due to Mr. Donoval's political affiliations. Other of the factual allegations relate to improper conduct by various City employees concerning their investigation and allegations of financial misconduct by Ms. Hammer and their making of disparaging public statements concerning both Plaintiffs. Ms. Hammer alleges the Defendants engaged in actions designed to publicly destroy her personal and professional reputations in retaliation for her complaints of misconduct against Mr. Ribí.

MEMORANDUM DECISION AND ORDER - 3

Ms. Hammer filed an administrative charge of discrimination and retaliation against the City with the Idaho Human Rights Commission (“IHRC”) and the Equal Employment Opportunity Commission (“EEOC”). A Right to Sue letter was issued and, thereafter, Ms. Hammer filed a complaint in the Blaine County District Court pursuant to the Idaho Protection of Public Employee’s Act (“IPPEA”). That action was ultimately dismissed. On May 3, 2013, Plaintiffs filed the Complaint in this case. Attached to the Complaint are: 1) the City’s Personnel Policies & Procedures Manual, 2) the City’s Municipal Government City Council and Mayor Powers and Authorities, 3) the City Code of Ethics and Code of Conduct, 4) Ms. Hammer’s Employment Agreement with the City, 5) Ms. Hammer’s Employment Agreement Extension, 6) job description for the City’s Finance Manager/Treasurer, 7) the City’s Credit Card Policy, 8) job description for the City Clerk, and 9) Engagement Letter for the City’s Investigation. (Dkt. 1.) The Court now considers the Motion for a Judgment on the Pleadings and related filings and finds as follows.

STANDARD OF LAW

Motions for a judgment on the pleadings are governed by Federal Rule of Civil Procedure 12(c) which provides that “[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.” Fed. R. Civ. P. 12(c). A motion for judgment on the pleadings is evaluated under the same standard applicable to motions to dismiss brought under Rule 12(b)(6). *See Enron Oil Trading & Trans. Co. v. Walbrook Ins. Co., Ltd.*, 132 F.3d 526, 529 (9th Cir. 1997). Thus, the

MEMORANDUM DECISION AND ORDER - 4

standard for a motion for judgment on the pleadings is that articulated in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007).

A motion to dismiss made pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the sufficiency of a party's claim for relief.² When considering such a motion, the Court's inquiry is whether the allegations in a pleading are sufficient under applicable pleading standards. Federal Rule of Civil Procedure 8(a) sets forth minimum pleading rules, requiring only a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).

A motion to dismiss will only be granted if the complaint fails to allege "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678 (citations omitted). A judgment on the pleadings may be granted only when it appears beyond doubt that the claiming party can prove no set of facts in support of his claim

² Rule 12(b)(6) of the Federal Rules of Civil Procedure provides that a party may move to dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6).

which would entitle him to relief.” *Enron Oil*, 132 F.3d at 529 (internal quotations and citations omitted).

When deciding a motion for judgment on the pleadings, the Court assumes the allegations in the complaint are true and construes them in the light most favorable to the non-moving party. *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009); *Erickson v. Pardus*, 551 U.S. 89, 93–94 (2007). A judgment on the pleadings is appropriate when, taking all the allegations in the complaint as true, the moving party is entitled to judgment as a matter of law. *Milne ex rel. Coyne v. Stephen Slesigner, Inc.*, 430 F.3d 1036, 1042 (9th Cir. 2005); *Westlands Water Dist. v. Firebaugh Canal*, 10 F.3d 667, 670 (9th Cir. 1993). Although “we must take all of the factual allegations in the complaint as true, we are not bound to accept as true a legal conclusion couched as a factual allegation.” *Twombly*, 550 U.S. at 555. Therefore, “conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state a claim.” *Caviness v. Horizon Comm. Learning Cent., Inc.*, 590 F.3d 806, 811-12 (9th Cir. 2010) (citation omitted).

ANALYSIS

1. Plaintiffs’ Motion to Convert

As a preliminary matter, Plaintiffs have filed a Motion to Convert the Motion to Dismiss into a motion for summary judgment. (Dkt. 22.) Plaintiffs argue the Defendants’ waiver argument is most suitable for analysis under the summary judgment standard because the Court should consider materials outside of the Plaintiffs’ Complaint.

MEMORANDUM DECISION AND ORDER - 6

Defendants oppose the Motion arguing they have not relied upon any materials outside of the pleadings or written exhibits attached to the pleadings. (Dkt. 29.) Further, Defendants argue, no additional materials other than those attached to the pleadings should be considered because the terms of the contract are clear and unambiguous.

“When ruling on a Rule 12(b)(6) motion to dismiss, if a district court considers evidence outside the pleadings, it must normally convert the 12(b)(6) motion into a Rule 56 motion for summary judgment, and it must give the nonmoving party an opportunity to respond.” *See United States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003) (citations omitted). The Court may, however, consider facts established by exhibits attached to the Complaint, facts which may be judicially noticed, and matters of public record. *Id.* Consideration of such documents outside the complaint does not convert the motion to dismiss into a motion for summary judgment. *Id.*; *In re Silicon Graphics Inc. Sec. Litig.*, 183 F.3d 970, 986 (9th Cir. 1999).

Here, the Court can and properly has considered the documents attached to the pleadings on this Rule 12(c) Motion without converting it to a motion for summary judgment. (Dkt. 1, 11.) The Court has not, however, considered any documents that were not attached to the pleadings. In doing so the Court notes that even though Plaintiffs’ allegations are accepted as true for the purposes of the instant Rule 12(c) Motion, the Court need not accept as true allegations that contradict matters contained within exhibits to the nonmoving party’s pleading, documents referred to in the non-moving party’s pleading, or materials that can be judicially noticed. *See Sprewell v. Golden State*

MEMORANDUM DECISION AND ORDER - 7

Warriors, 266 F.3d 979, 989, amended on other grounds, 275 F.3d 1187 (9th Cir. 2001);
In re Silicon Graphics Inc. Securities Litig., 183 F.3d 970, 986 (9th Cir. 1999);
Heliotrope Gen., Inc. v. Ford Motor Co., 189 F.3d 971, 981 n. 18 (9th Cir. 1999). The
Plaintiffs' Motion to Covert is denied.

Furthermore, in deciding this Motion, the Court has not considered any extrinsic evidence. The instant Motion is for a judgment on the pleadings raising a legal question as to the implications, if any, the terms of the written contracts have on the claims brought by Plaintiffs. When based on the contractual language itself without resort to extrinsic evidence, interpretation of a contract is a purely legal question which is susceptible to a motion for judgment on the pleadings. *Cf. Atel Financial Corp. v. Quaker Coal Co.*, 321 F.3d 924, 925–26 (9th Cir. 2003) (interpretation of a contract is a pure question of law). As stated herein, the language of the contracts at issue is clear and unambiguous. Therefore, the terms are given their plain meaning. *See Wylie v. State, Idaho Transp. Bd.*, 253 P.3d 700, 706 (Idaho 2011) (“If the contract’s terms are clear and unambiguous, the determination of the contract’s meaning and legal effect are questions of law and the meaning of the contract and the intent of the parties must be determined from the plain meaning of the contract’s own words. If, however, the contract is determined to be

ambiguous, the interpretation of the document is a question of fact which focuses upon the intent of the parties.”) (quoting *Page v. Pasquali*, 244 P.3d 1236, 1239 (2010)).

2. Defendants’ Motion for a Judgment on the Pleadings

On June 1, 2008, Ms. Hammer signed a City Administrator Employment Agreement (“Employment Agreement”) beginning her term of employment with the City. (Dkt. 1-5, Ex. 4.) Thereafter, on January 23, 2012, Ms. Hammer signed the Supplemental Release of Claims (“Supplemental Release”) which effectively ended her employment with the City. (Dkt. 11-1, Ex. A.) Defendants argue that under the plain and unambiguous terms of those documents, Ms. Hammer waived and/or released all but two of the claims brought in this case.³ (Dkt. 18 at 3-5) (Dkt. 27 at 2-3.) Defendants maintain that Ms. Hammer was terminated without cause pursuant to Section 3.A. of the Employment Agreement which triggered both 1) a waiver of any claim arising from a termination without cause pursuant to a severance payment and 2) a release of all claims against the City effective upon receipt of said severance payment. (Dkt. 18 at 4.)⁴

Plaintiffs counter that the Defendants have not shown that, based on the totality of the circumstances, Ms. Hammer intentionally, voluntarily, knowingly, and deliberately waived her non-contract claims. (Dkt. 21 at 9, 12.) Plaintiffs maintain that Ms. Hammer

³ Defendants do not seek dismissal of Counts IX and XI as they do not arise out of the termination and, therefore, were not waived/released under the terms of the contracts. (Dkt. 27.)

⁴ Defendants raise other arguments in their Motion but because the Court’s finding on the waiver/release argument is dispositive, the Court has not discussed the other grounds raised by the defense.

did not intend to waive any of her non-contract tort or constitutional claims and that she, through her attorney/husband Mr. Donoval, repeatedly advised the City that Ms. Hammer would not waive or release any non-contract claims other than those arising from the severance package. Thus, Ms. Hammer's position is that her intent was that the release only extend to claims arising out of any dispute related to the severance. (Dkt. 21 at 10-11.) Plaintiffs further assert that there is a presumption against waivers and, given the totality of the circumstances here, Ms. Hammer was coerced into signing the release, and the release was not supported by consideration.

Section 3.A of the Employment Agreement states:

Employer, acting through the Mayor, may terminate Employee's employment, **without cause**, for any reason or no reason. Any such decision to terminate shall occur only after the Mayor consults with each member of the City Council. Upon such termination, Employer shall pay Employee, as severance pay, a lump sum cash payment equal to six (6) months, base salary described in Section 5, Subsection A.

The severance payment herein is intended to be Employee's **sole exclusive remedy** for any and all claims for damages of any kind arising from a termination **without cause** and such severance payment is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement. Accordingly, Employee waives her right to bring a claim of any kind for damages against Employer arising from a termination **without cause**. Consequently, receipt of the severance payment is subject to execution of a release of all claims against the City of Sun Valley. A termination **without cause** shall not entitle Employee to an informal review under any section of the City of Sun Valley Personnel manual ("Personnel Manual").

(Dkt. 1-5, Ex. 4 at 2) (emphasis in original.)

The Supplemental Release signed by Ms. Hammer on January 23, 2012, states:

Upon payment of the severance payment required pursuant to Section 3.A. of the City Administrator Employment Agreement dated June 1, 2008, I release the City of Sun Valley for any claims defined in Section 3.A. of the City Administrator Employment Agreement as were intended when the City Administrator Employment Agreement was entered into on June 1, 2008.

(Dkt. 21 at 10) (citing Dkt. 11-1, Ex. A.)

Having reviewed the pleadings and documents at issue on this Motion, the Court finds the Employment Agreement and Supplemental Release of Claims to be clear and unambiguous. In Idaho:

When the language of a contract is clear and unambiguous, its interpretation and legal effect are questions of law. An unambiguous contract will be given its plain meaning. The purpose of interpreting a contract is to determine the intent of the contracting parties at the time the contract was entered. In determining the intent of the parties, this Court must view the contract as a whole.... Whether a contract is ambiguous is a question of law. A contract is ambiguous if it is reasonably subject to conflicting interpretations.

Lakeland True Value Hardware, LLC v. Hartford Fire Ins. Co., 291 P.3d 399, 406 (Idaho 2012) (quoting *Bakker v. Thunder Spring–Wareham, LLC*, 108 P.3d 332, 337 (Idaho 2005) (citation omitted)). The meaning of an unambiguous contract must be determined from the plain meaning of the contract's own words. *State v. Hosey*, 11 P.3d 1101, 1104 (Idaho 2000). Where a contract is determined to be ambiguous, interpretation of the contract is a question of fact that focuses on the intent of the parties. *Id.* Whether the facts establish violation of the contract is a question of law over which the court exercises free review. *Id.*

MEMORANDUM DECISION AND ORDER - 11

There is no ambiguity in the terms, words, or phrases used in either document as to the particular terms in question here. As discussed below, the terms of the two documents are clear and not subject to conflicting interpretations when viewed as a whole. Accordingly, the Court will consider the terms at issue here from the four corners of the documents giving the plain meaning to the language therein.

i) Waiver/Release of Claims

In considering the Motion, the Court must first determine whether, as a matter of law, the language of the documents themselves constitutes a waiver and/or release of Plaintiffs' claims.

Again, the Supplemental Release signed by Ms. Hammer on January 23, 2012, states:

Upon payment of the severance payment required pursuant to Section 3.A. of the City Administrator Employment Agreement dated June 1, 2008, I release the City of Sun Valley for any claims defined in Section 3.A. of the City Administrator Employment Agreement as were intended when the City Administrator Employment Agreement was entered into on June 1, 2008.

(Dkt. 21 at 10) (citing Dkt. 11-1, Ex. A.) Section 3.A. of the Employment Agreement further clarifies that the "severance payment is intended to be Employee's **sole exclusive remedy** for any and all claims for damages of any kind arising from a termination **without cause** and such severance payment is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement." (Dkt. 1-5, Ex. 4 at 2) (emphasis in original.)

The Court concludes that, as a matter of law, this express unambiguous language plainly, clearly, and unambiguously waived and/or released “any and all claims for damages of any kind arising from a termination without cause” that Ms. Hammer may have had and forecloses her “right to bring a claim of any kind for damages against Employer arising from a termination without cause.” (Dkt. 1-5, Ex. 4 at 2.) Ms. Hammer was terminated on January 19, 2012. There is no dispute that she accepted a severance payment and signed the release of claims quoted above on January 23, 2012. Thus, the terms of Section 3.A. of the Employment Agreement waiving/releasing “any and all claims” arising from a termination without cause is effective as to any claims in existence as of that date. There simply is no other reasonable interpretation of the express language of the documents which use the phrases: “any and all claims,” “sole exclusive remedy,” and “right to bring a claim of any kind for damages.” The plain meaning of these words, phrases, and terms is abundantly clear.

Plaintiffs contend that Ms. Hammer’s termination was not “without cause” and, therefore, not subject to the waiver provision of Section 3.A. of the Employment Agreement.⁵ This argument is contrary to the plain and unambiguous language of the Employment Agreement and the undisputed fact that she accepted the severance payment as provided for in Section 3.A. of the Employment Agreement. (Dkt. 1-5, Ex. 4) (Dkt. 11-

⁵ The Complaint at first acknowledges that the reason for Ms. Hammer’s termination from her position as City Administrator on January 19, 2012 was pursuant to the “without cause” terms of her employment contract. (Dkt. 1 at ¶¶ 75, 265) (quotations in original.) The Complaint later alleges that her termination was actually for “cause” and in retaliation for her complaints of harassment and discrimination. (Dkt. 1 at ¶ 266, 305, 402, 438-441) (quotations in original.)

1, Ex. A.) Notably, the release Ms. Hammer signed specifically references Section 3.A. of the Employment Agreement which applies to terminations “without cause.” (Dkt. 11-1, Ex. A.) To now argue her termination was for cause is contrary to the plain and unambiguous language of the documents she affixed her signature to. Based on the undisputed facts, the pleadings, and the relevant documents attached thereto, the Court finds as a matter of law that the terms of the contract constitute a waiver and/or release of all of Ms. Hammer’s claims with the exception of Counts IX and XI.

ii) The Waiver/Release was Voluntary, Intentional, and Knowing

The Court must next determine whether Ms. Hammers’ release of her claims was “voluntary, deliberate and informed.” *Stroman v. West Coast Grocery Co.*, 884 F.2d 458, 462 (9th Cir. 1989) (a Title VII act claim) (quoting *Salmeron v. United States*, 724 F.2d 1357, 1361 (9th Cir. 1989)) (citations omitted); *see also Jones v. Taber*, 648 F.2d 1201, 1203 (9th Cir. 1981) (“A release of claims under section 1983 is valid only if it results from a decision that is voluntary, deliberate, and informed.”). The validity and interpretation of a release of significant federal rights is governed by federal law. *Salmeron*, 724 F.2d at 1361 (citation omitted). A release of claims for violations of civil and constitutional rights must be voluntary, deliberate and informed. *Id.* That determination is “predicated upon an evaluation of several indicia arising from the circumstances and conditions under which the release was executed.” *Stroman*, 884 F.2d at 462 (quoting *Coventry v. United States Steel Corp.*, 856 F.2d 514, 522 (3d Cir. 1988)); (citing *Salmeron*, 724 F.2d at 1362 (whether a release was voluntary must be determined

from all the circumstances); *Jones*, 648 F.2d at 1203 (whether release was voluntary depends on both objective and subjective factors)). “Of primary importance in this calculation is the clarity and lack of ambiguity of the agreement,...the plaintiff’s education and business experience,...the presence of a noncoercive atmosphere for the execution of the release,...and whether the employee had the benefit of legal counsel.” *Stroman*, 884 F.2d at 462 (citations and quotations omitted). The Supreme Court has held that “a waiver of constitutional rights in any context must, at the very least, be clear.” *Fuentes v. Shevin*, 407 U.S. 67, 94 (1972).

Accepting the facts as stated in the pleadings as true, the Court finds the totality of the circumstances evidences that Ms. Hammer made a voluntary, deliberate and informed waiver of any and all of her claims when she accepted the agreed to severance payment. Ms. Hammer signed the release after being advised by her legal counsel and husband on the matter. The plain and unambiguous terms make abundantly clear that the acceptance of the severance payment waives and/or releases any and all claims Ms. Hammer may have had for damages arising from her termination. Although Plaintiffs now argue they did not know or intend to give up their non-contract tort and constitutional claims, the fact remains that the plain and express terms of the documents they signed clearly state otherwise. Ms. Hammer is a knowledgeable person who worked in a professional capacity for the City for several years and was advised by her legal counsel and husband before signing the release. Had the Plaintiffs believed and/or intended something other than what was plainly and explicitly stated in the written documents they could have and

MEMORANDUM DECISION AND ORDER - 15

should have included language to that effect in the documents themselves.

Plaintiffs argue a release of constitutional claims must be supported by consideration. (Dkt. 21 at 15-16.) Plaintiffs are correct. “Under federal law, a valid release must be supported by consideration.” *Salmeron*, 724 F.2d at 1362 (citing *Maynard v. Durham & S.R. Co.*, 365 U.S. 160, 162–63 (1961) (citations omitted)). Here, however, consideration for the release of “any and all claims” was given in the form of the six-months severance pay which Plaintiffs do not dispute having received.

The Plaintiffs’ further argue there is an inherent presumption against the waiver of constitutional rights and they could not have prospectively waive their constitutional or statutory rights to claims that had not yet accrued at the time of contracting. (Dkt. 21 at 11-12.) Defendants maintain that even if she did not prospectively waived her claims in the Employment Agreement, she released all claims she had against the City when she executed the Supplemental Release and accepted the severance payment. (Dkt. 27 at 3.)

Generally there cannot be a prospective waiver of an employee’s rights. *See EEOC v. Townley Engineering & Mfg. Co.*, 859 F.2d 610, 616 (9th Cir. 1988) (Title VII discrimination case) (citation omitted). Here, however, the contract terms giving rise to the waiver/release became effective on January 23, 2012 when Ms. Hammer signed the Supplemental Release. The actions giving rise to Plaintiffs claims had already occurred by that date and, therefore, the claims were known to Plaintiffs at the time Ms. Hammer signed the Supplemental Release.

Plaintiffs also assert they were coerced into signing the Supplemental Release;

pointing to the harassment by Mr. Ribi prior to her signing and Ms. Hammer's concerns for her "economic wherewithal." (Dkt. 21 at 13-15.) The Complaint alleges that at the time of her termination and the signing of the Supplemental Release, Ms. Hammer and her husband had both been subject to harassment. Those allegations describe the harassing environment Ms. Hammer claims she had endured leading up to and following her termination and the signing of the Supplemental Release. *See e.g.* (Dkt. 1 at ¶¶ 69, 76, 79, 103, 113, 179, 190-91, 199, 248, 251, 260, 262-70, 305.) There are, however, no factual allegations concerning the actual negotiations or signing of the release; let alone any that go to show Plaintiffs were coerced into signing the Supplemental Release.

Further, the Plaintiffs' response brief actually demonstrates that Plaintiffs understood the ramifications of signing the release by recognizing the choices Ms. Hammer was faced with: 1) signing the release and receiving the severance or 2) refusing to sign the release and forego any severance. (Dkt. 21 at 13-14.) This demonstrates that Ms. Hammer knew full well what choices she had when she elected to sign the release. Further, given the totality of the circumstances stated above – Ms. Hammer's knowledge and the fact she had been advised by legal counsel – the Court concludes that there are no facts alleged indicating Plaintiffs were coerced. The Plaintiffs' other arguments raised after the fact stating they had different intentions concerning the terms and disclaimers that they believe limited the release or preserved her constitutional claims also fail. The language of the contract could not be clearer. The waiver/release was as to "any and all claims" without any limitations.

MEMORANDUM DECISION AND ORDER - 17

Based on the foregoing, the Court finds the claims raised in Counts I-VIII, X, and XII-XIV have been waived and/or released by the express terms of the written documents as they are claims arising out of Ms. Hammer's termination without cause. The remaining claims are Count IX, Deprivation of Due Process against all Defendants, and Count XI, Assault against Mr. Ribi. (Dkt. 1.)

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that the Motion for Judgment on the Pleadings (Dkt. 18) is **GRANTED**. Counts I-VIII, X, and XII-XIV are **DISMISSED**. The Counts remaining for trial are IX and XI.



DATED: **June 17, 2014**

A handwritten signature in black ink, appearing to read "Edward J. Lodge".

Honorable Edward J. Lodge
U. S. District Judge

Kirtlan G. Naylor [ISB No. 3569]
Tyler D. Williams [ISB No. 8512]
Jacob H. Naylor [ISB No. 8474]
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock Street, Ste. 610
Boise, Idaho 83702
Telephone No. (208) 383-9511
Facsimile No. (208) 383-9516
Email: kirt@naylorhales.com; tdw@naylorhales.com; jake@naylorhales.com

Attorneys for Defendants City of Sun Valley, Ribi, and Briscoe

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

SHARON R. HAMMER and JAMES R.
DONOVAL, husband and wife,

Plaintiffs,

vs.

CITY OF SUN VALLEY; NILS RIBI, in his
individual and official capacity; and
DeWAYNE BRISCOE, in his individual and
official capacity,

Defendants.

Case No. 1:13-cv-211-EJL

**DECLARATION OF DEWAYNE
BRISCOE**

I, DEWAYNE BRISCOE, declare under penalty of perjury that the following is
true and correct:

1. I am over the age of eighteen (18) and competent to testify to the matters
herein. I make this declaration based upon my personal knowledge.

DECLARATION OF DEWAYNE BRISCOE - 1.

2. I am the Mayor of the City of Sun Valley and in that capacity I have access to and control over the documents identified below. Additionally, I am a named defendant in this lawsuit and have personal knowledge about the matters set forth herein.

3. Attached as **Exhibits A** is a true and correct copy of the minutes for the November 11 and 14, 2011 executive sessions of the Sun Valley City Council. (SV 2069-2070.)

4. Attached as **Exhibit B** is a true and correct redacted copy of a letter dated November 12, 2011, from James R. Donoval to Sun Valley, which was delivered on November 13, 2011. (SV 88-92) (redacted).

5. Attached as **Exhibit C** is a true and correct redacted copy of a letter dated November 15, 2011, from Donoval to Sun Valley. (SV 95-96) (redacted).

6. Attached as **Exhibit D** is a true and correct redacted copy of a letter dated November 16, 2011, from Donoval to Sun Valley. (SV 97-100) (redacted).

7. Attached as **Exhibit E** is a true and correct copy of the November 18, 2011 notice to Sharon Hammer placing her on paid administrative leave. (SV 337.)

8. Attached as **Exhibit F** is a true and correct copy of the December 20, 2011 Ball Report regarding Sharon Hammer, as well as the accompanying exhibits. (BALL 1-259) (filed on seal) Note that the Ball Report actually consisted of three separate reports covering allegations involving the Fire Department, Councilman Nils Ribi, and Hammer.

9. Attached as **Exhibit G** is a true and correct copy of the December 16, 2011 "NOTICE OF CONTINUED PAID ADMINISTRATIVE LEAVE PENDING INVESTIGATION" to Sharon Hammer. (SV 338-339.)

DECLARATION OF DEWAYNE BRISCOE - 2.

10. Attached as **Exhibit H** is a true and correct copy of the December 16, 2011 Garrity Notice to Sharon Hammer. (SV 344-345.)

11. Attached as **Exhibit I** is a true and correct copy of the December 16, 2011 authorization to notify the Blaine County Prosecuting Attorney re: possible criminal misconduct. (SV 342.)

12. Attached as **Exhibit J** is a true and correct copy of the January 4, 2012 authorization to notify the Blaine County Prosecuting Attorney re: possible criminal misconduct. (SV 343.)

13. Attached as **Exhibit K** is a true and correct copy of the January 4, 2012 "NOTICE OF PAID ADMINISTRATIVE LEAVE PENDING INVESTIGATION" to Hammer. (SV 340-341.)

14. Attached as **Exhibit L** is a true and correct copy of the January 4, 2012 Garrity Notice to Hammer. (SV 346-347). Similar notices were issued to other Sun Valley employees in connection with the Ball Investigation and findings regarding the Fire Department.

15. Attached as **Exhibit M** is a true and correct copy of the January 16, 2012 Press Release regarding the settlement of a lawsuit by Hammer against Sun Valley and Sun Valley officials. (SH-TIMELINE 000618.)

16. Attached as **Exhibit N** is a true and correct copy of the minutes from the January 19, 2012 City Council meeting. (SV 2084-2088.)

17. Attached as **Exhibit O** is a true and correct copy of a press release issued by Sun Valley about Hammer's employment termination. (HAMMER 000327.)

18. In February 20012, Sun Valley hired the law firm Moffatt Thomas Barrett Rock & Fields, Chtd., who engaged an independent accounting firm, Hagen, Streiff, Newton & Oshiro, P.C. to
DECLARATION OF DEWAYNE BRISCOE - 3.

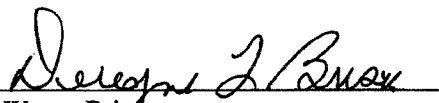
conduct a thorough audit of Sun Valley's financial matters from 2009 through 2011 (the "Forensic Audit"). Attached as **Exhibit P** is a true and correct copy of Forensic Audit Summary Report. (SV 2718-2734.)

19. Attached as **Exhibit Q** is a true and correct copy of a letter from the Blaine County Prosecutor, Jim Thomas, about his decision not to charge Hammer with criminal misconduct. (SV 1175-1183.)

20. During the summer of 2012, two Sun Valley employees, Michelle Frostenson, former Treasurer, and Kelly Ek, former Clerk, provided notices of tort claims against Sun Valley and various Sun Valley officials, including Sharon Hammer, based on allegations that they had been retaliated against after making various allegations of misconduct. These matters were settled in June 2012. Sun Valley published a press release about each settlement, attached as **Exhibit R** (SV 2413) and **Exhibit S** (SV 2414.)

PURSUANT to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on this 26 day of June, 2014.


DeWayne Briscoe

DECLARATION OF DEWAYNE BRISCOE - 4.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of June, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent a Notice of Electronic Filing to the following person(s):

- Eric Swartz: eric@jonesandswartzlaw.com
- Joy Vega: joy@jonesandswartzlaw.com

8406_31 Declaration of Briscoe.wpd

DECLARATION OF DEWAYNE BRISCOE - 5.

ORIGINAL

**SPECIAL COUNCIL MEETING MINUTES
OF THE MAYOR AND CITY COUNCIL
IN THE COUNCIL CHAMBERS - 81 ELKHORN ROAD
CITY OF SUN VALLEY, IDAHO
NOVEMBER 11, 2011 2:00 P.M.**

The Mayor and the City Council of Sun Valley, Blaine County, State of Idaho, met in a Special Council Meeting in the Sun Valley City Hall Council Chambers on November 11, 2011 2:00 p.m.

**CALL TO ORDER
ROLL CALL**

PRESENT: Mayor Wayne Willich, Council President Dewayne Briscoe, Council member Bob Youngman and Council member Nils Ribi.

ABSENT: Council member Joan Lamb.

**EXECUTIVE SESSION
MOTION**

Council member Nils Ribi moved to enter into Executive Session pursuant to Idaho Code 67-2345 1 (b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student; seconded by Council member Bob Youngman.

AYES: Council President Dewayne Briscoe, Council member Bob Youngman and Council member Nils Ribi.

NAYES: None
Council member Joan Lamb was absent for this vote.
The Mayor declared the motion carried.

Executive Session began at 2:10 p.m.
Executive Session ended at 4:45 p.m.

**AMEND AGENDA
MOTION**

Council President Dewayne Briscoe moved to amend the agenda to add an item authorizing the Mayor and City Attorney to have a discussion with a City Employee, seconded by Council member Bob Youngman.

AYES: Council President Dewayne Briscoe, Council member Bob Youngman and Council member Nils Ribi.

NAYES: None
Council member Joan Lamb was absent for this vote.
The Mayor declared the motion carried.

Council member Bob Youngman stated the good faith reason to amend the agenda was based on information received by Council in Executive Session.

MOTION

Council member Nils Ribi moved to approve authorizing the Mayor and City attorney to meet with an employee consistent with what was discussed in Executive Session, seconded by Bob Youngman.

AYES: Council President Dewayne Briscoe, Council member Bob Youngman and Council member Nils Ribi.

NAYES: None
Council member Joan Lamb was absent for this vote.

MOTION

Council President Dewayne Briscoe moved to continue the Special Council meeting date certain to Monday November 14th, 2011 at 10:00 a.m, seconded by Council member Bob Youngman.
Council member Joan Lamb was absent for this vote.

AYES: Council President Dewayne Briscoe, Council member Bob Youngman and
Council member Nils Ribi.
NAYES: None

The Mayor declared the motion carried.

RECESS

Mayor Willich recessed the meeting at 4:50 p.m.

**SPECIAL COUNCIL MEETING MINUTES OF THE MAYOR AND CITY COUNCIL CONTINUED
CITY OF SUN VALLEY, IDAHO**

**COUNCIL MEETING OF NOVEMBER 11, 2011.
RECONVENED NOVEMBER 14, 2011 9:00 A.M
ROLL CALL**

PRESENT: Mayor Wayne Willich, Council President Dewayne Briscoe, Council member Bob
Youngman, Council member Nils Ribi and Council member Joan Lamb.

ABSENT: None
Council member Joan Lamb participated via telephone.

EXECUTIVE SESSION

MOTION

Council President Dewayne Briscoe moved to enter into Executive Session pursuant to Idaho Code
67-2345 1 (b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges
brought against, a public officer, employee, staff member or individual agent, or public school student;
seconded by Council member Bob Youngman.

Executive Session began at 9:00 a.m.
Executive Session ended at 12:00 p.m.

AMEND AGENDA

MOTION

Council member Bob Youngman moved to add an item to the agenda to discuss hiring an attorney to
conduct an independent investigation, seconded by Council President Dewayne Briscoe.

AYES: Council President Dewayne Briscoe, Council member Bob Youngman, Council
member Nils Ribi and Council member Joan Lamb.

NAYES:None

The Mayor declared the motion carried.

Council member Bob Youngman stated the good faith reason was this item just arose during
Executive Session.

Council member Nils Ribi indicated he was opposed to starting an independent investigation until
Mayor Willich placed the City Administrator on a Leave of Absence.

MOTION

Council member Bob Youngman moved to authorize the Mayor to engage an attorney to conduct an
independent investigation, seconded by Council President Dewayne Briscoe.

AYES: Council President Dewayne Briscoe, Council member Bob Youngman and

NAYES: Council member Nils Ribi.

Council member Joan Lamb was unable to vote due to a cellular disconnection.

The Mayor declared the motion carried

JAMES R. DONOVAL

Attorney

4325 Fairway Nine Condos
PO Box 1499
Sun Valley, ID 83353
(312) 859-2029; (208) 721-7383
jdonoval@aol.com

STRICTLY CONFIDENTIAL
Not For Public Distribution
In Contemplation Of Litigation

November 12, 2011

Hon. Wayne Willich
Sun Valley City Hall
Sun Valley, ID 83353

Re: Sharon R. Hammer – Sun Valley City Administrator

Mayor Willich:

Be advised that I represent Ms. Hammer related to the oral allegations of impropriety forwarded to Ms. Hammer late in the day on Friday, November 11, 2011, by yourself and Sun Valley City Attorney Adam King. These allegations had been discussed by yourself and Mr. King with Sun Valley City Council members Nils Ribi, Bob Youngman and DeWayne Briscoe during a Sun Valley City Council Executive Session earlier in the day. Pursuant to both Idaho State Statutes and the City Of Sun Valley Policies And Procedures, the Sun Valley City Council has no independent authority to take disciplinary action or to terminate Ms. Hammer. Only the Mayor Of Sun Valley can authorize the termination or disciplinary action of a City Of Sun Valley employee, and in particular the Sun Valley City Administrator (namely, Ms. Hammer). Thus the termination payment offered to Ms. Hammer as described by yourself and Mr. King as being made on behalf of Mr. Ribi, Mr. Youngman and Mr. Briscoe, is unauthorized under Idaho law and the City Of Sun Valley policies, and is therefore a nullity. Therefore, no response to Mr. Ribi's, Mr. Youngman's and Mr. Briscoe's request will be forthcoming.

Both you and Mr. King described allegations that were discussed at the Executive Session on Friday. However, no written corroboration or written detail of such allegations were provided to Ms. Hammer during her discussions with you and Mr. King. Although you hinted at other allegations at that time, the two main allegations of impropriety described to Ms. Hammer was that Ms. Hammer somehow violated City Of Sun Valley vacation pay and use of City Of Sun Valley automobile policies. Ms. Hammer un-categorically denies any such allegations.


Ms. Hammer Was Granted Flexible Personal Time And Was Authorized To Use A City Of Sun Valley Vehicle

Although Ms. Hammer refuses to respond in detail to any allegations until such are detailed in a formal written charging document, it should be noted that Section 10 of the existing City Administrator Employment Agreement between the City Of Sun Valley and Ms. Hammer provides that "the Mayor, in consultation with the Employee, shall fix such other terms and conditions of employment, as he may determine from time to time to be appropriate." Ms. Hammer discussed a flexible work schedule with you in which you agreed that hours worked outside of a normal 8 a.m. to 5 p.m. workday could be taken off without the use of vacation time. Additionally, Ms. Hammer requested and you approved her use of the City Of Sun Valley automobile at issue. Should the City Of Sun Valley, and in particular Mayor-Elect Briscoe, wish to change the current policies you implemented related to both flexible time off and the use of the City Of Sun Valley owned automobile, Ms. Hammer will comply with those directives. However, for the City Of Sun Valley to retroactively modify either policy as a basis for disciplinary action or for termination of Ms. Hammer has no support in law, logic or basic fairness, and will be challenged and litigated to the fullest extent, if required.

Mr. Ribí Is Seeking Retribution For Ms. Hammer's Reporting Of His Own Abusive Behavior And Harassment

On multiple occasions, Ms. Hammer has been verbally and mentally abused by Sun Valley Council Member Nils Ribí, and on at least one occasion was physically threatened by Mr. Ribí. These incidents were witnessed by others and reported to you, Mr. King and Sun Valley Police Chief Cam Daggett. It is my understanding that you have also notified Mr. Ribí of his inappropriate conduct towards Ms. Hammer. Ms. Hammer has required medical and personal counseling due to the harassment inflicted by Mr. Ribí, and Mr. Ribí's actions and the results of his actions have been documented.

To date, Ms. Hammer has refrained from prosecuting Mr. Ribí and the City Of Sun Valley for harassment, as would be her right pursuant to the clearly established Sun Valley policies and procedures on harassment of employees. However, it is now clear to Ms. Hammer that due to the impending change of administration, that by seeking her dismissal that Mr. Ribí is seeking retribution against Ms. Hammer for Ms. Hammer's previous reporting of Mr. Ribí's inappropriate action against Ms. Hammer to yourself and other Sun Valley officials. Thus, should the City Of Sun Valley, and in particular Mr. Ribí, continue to make allegations of impropriety against Ms. Hammer, she will prosecute Mr. Ribí and the City Of Sun Valley for harassment, for defamation of character and for retaliatory discharge to the full extent of the law. In doing so, Ms. Hammer will seek a full investigation through discovery and disclosure of facts of Mr. Ribí's own history of misconduct



[REDACTED]

[REDACTED]

Sun Valley City Attorney Adam King Should Be Barred From Further Participation In The Matter

We are seeking that Sun Valley City Attorney Adam King be barred from any further involvement in any matters related to Ms. Hammer. Mr. King has been notified by both you and Ms. Hammer of multiple issues related to the personnel problems associated with Mr. Ribi. And,

[REDACTED]

Should this matter go to trial, Mr. King will certainly be a witness associated with his statements and knowledge [REDACTED]

The City Of Sun Valley Has A Well Established Policy On Employee Discipline

The City Of Sun Valley has established progressive discipline policies related to all employees, which includes Ms. Hammer, and has established policies requiring that employees against whom disciplinary actions are taken are to be provided with the right to due process to defend any and all allegations of misconduct.

Ms. Hammer has never been notified of any prior acts of misconduct, and she has been given exceptional reviews by yourself since she became the Sun Valley City Administrator in 2008. Ms. Hammer has been credentialed by the International City/County Manager's Association during her tenure with the City Of Sun Valley, verifying her dedication to the highest standards of ethical management, and has received the highest accolades from the Government Finance Officer's Association for both the City Of Sun Valley 2011 Budget and the City Of Sun Valley 2010 Audit, indicating Ms. Hammer's conformance with the highest standards of financial reporting, in direct contradiction to the claims asserted against her as to her purported financial mismanagement. Considering Ms. Hammer's exemplary performance and the failure of the City Of Sun Valley to bring any previous allegations of mismanagement against Ms. Hammer, there is certainly no basis for a dismissal of Ms. Hammer for cause based on purported violations of policies which had been approved by yourself.

As to the procedures being followed by the Sun Valley City Council related to Ms. Hammer's purported misconduct, Ms. Hammer is certainly entitled to 1) formal written notice of the charges being assessed against her, 2) disclosure of any and all documents which support the claims being made against her, and 3) a formal hearing on the charges being assessed against her at which time she is entitled to legal representation and the right to confront her accusers and bring forward witnesses and evidence in her defense. On information and belief, Former Sun Valley City Administrator Virginia Egger was provided with the same full due process rights when Mr. Ribi also brought misconduct allegations against her, and Ms. Hammer should be entitled to no less of due process protections.

Any Disciplinary Actions Against Ms. Hammer, Prior To A Full And Complete Confidential Investigation, The Confidential Filing Of Formal Charges And Confidential Formal Proceedings Will Be Considered A Purposeful Attack Upon Ms. Hammer's Otherwise Unblemished Professional Character

Please be placed on notice that any disciplinary actions taken by the City Of Sun Valley, including placing Ms. Hammer on administrative leave before Ms. Hammer is provided with written charges and until a full and complete due process procedure is followed, all of which must be done in total confidence, will be considered to be an action on behalf of the City Of Sun Valley (and in particular Mr. Ribi), to damage Ms. Hammer's otherwise stellar and unblemished professional character, and will result in Ms. Hammer seeking vindication of such. As has been described, Ms. Hammer has a long history of being recognized for her professional performance and ethical conduct by national professional organizations such as the International City/County Manager's Association and the Government Finance Officer's Association. Based on those accolades, Ms. Hammer should be given the benefit of the doubt as to her integrity and ethics.

As you are well aware, should you place Ms. Hammer on administrative leave, such action will be published in the Idaho Mountain Express. The effect of such public notice of the assertion that Ms. Hammer has done something improper will never be able to be adequately countered in the future even if such charges are later dismissed. There can be no doubt that Mr. Ribi's intentions of convincing you to put Ms. Hammer on administrative leave is a purposeful attempt on the part of Mr. Ribi to publicly besmirch Ms. Hammer's otherwise pristine reputation.

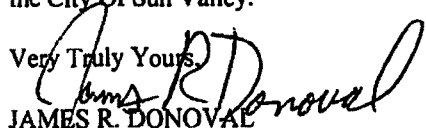
I implore you to avoid the inclination to place Ms. Hammer on administrative leave. As you are aware, Ms. Hammer has no authority to sign checks or for payroll – as that rests solely with you and Sun Valley City Clerk Kelly Eck (based upon presentation of request for payment of such to you by Sun Valley Finance Manager/Treasurer Michelle Frostenson). Thus, any assertion that Ms. Hammer could somehow act inappropriately with Sun Valley funds is impossible. And as you are also aware, you are personally in Sun Valley City Hall almost every day and will continue to have direct supervision over almost all activities of Ms. Hammer during an investigatory period. The weighing of the costs associated with Ms. Hammer's permanent loss of professional credibility should you place her on administrative leave, and the costs of the inevitable litigation that will follow, are clearly outweighed by your personal ability to control and approve all financial transactions of Sun Valley during an investigatory period.

Request For A Special Sun Valley City Council Executive Session

We are seeking that you call a Special Meeting and Executive Session of the Sun Valley City Council for Wednesday, November 16, 2011, and that you allow myself, Ms. Hammer, and recently elected Sun Valley City Council members Franz Suhadolnik and Michelle Griffith to attend such Executive Session. Based on the above described issues, we request that Mr. King be barred from attending such Executive Session (although we have no objection to another attorney being present to represent yourself and the City Of Sun Valley). By the end of the day Tuesday, November 15, 2011, we demand that we be provided with formal written charges of any wrongdoing that Ms. Hammer is being charged with and that we be provided with any and all documents associated with the allegations against Ms. Hammer for use in such Executive Session. At the November 16, 2011 Executive Session we expect to fully discuss any assertions made against Ms. Hammer and the allegations being asserted herein against Mr. Ribí, and we will be expecting that any and all assertions of wrongdoing against Ms. Hammer be dismissed at that time, with prejudice. Should the City Of Sun Valley choose to either not hold the Executive Session described above or to fully dismiss all allegations of mis-management or other wrong doing against Ms. Hammer, with prejudice, by Friday, November 18, 2011 – on Monday, November 21, 2011, we will file the aforementioned harassment claims against Mr. Ribí and the City Of Sun Valley in the Blaine County Court and let the litigation process, and the inevitable negative publicity to the City Of Sun Valley that will ensue, take its course. Any further disciplinary action taken by the City Of Sun Valley against Ms. Hammer thereafter will result in the addition of damage to reputation and retaliatory discharge claims against Mr. Ribí and the City Of Sun Valley.

Obviously, this is not the stable transfer of administrations and the retaining of the quality professional employees that both you and Mayor-Elect Briscoe have publicly promised, nor can Mayor-Elect Briscoe possibly be satisfied that his new administration will commence with such acrimony. However, should Mr. Ribí's vindictive intentions against Ms. Hammer be the controlling focus of the Sun Valley City Council, inevitably the next few months, or years, will be dominated by attention being paid to Mr. Ribí's emotional illness and continued abuse of City Of Sun Valley employees rather than all of the high quality improvements that Ms. Hammer and the other highly skilled City Of Sun Valley employees have brought and will continue to bring to the City Of Sun Valley.

Very Truly Yours,


JAMES R. DONOVAL
Attorney At Law

cc: S. Hammer
J. Lamb
D. Briscoe
N. Ribí
R. Youngman
F. Suhadolnik
M. Griffith

JAMES R. DONOVAL

Attorney

4325 Fairway Nine Condos
PO Box 1499
Sun Valley, ID 83353
(312) 859-2029; (208) 721-7383
jdonoval@aol.com

STRICTLY CONFIDENTIAL
Not For Public Distribution
In Contemplation Of Litigation

November 15, 2011

Hon. Wayne Willich
Sun Valley City Hall
Sun Valley, ID 83353

Re: Sharon R. Hammer – Allegations Of Misconduct
Continued Demand For Total Confidentiality

Mayor Willich:

As you are aware, on November 13, 2011, I served upon yourself and all current and about to be seated Sun Valley City Council members a letter seeking that you call a Special Sun Valley City Council meeting and Executive Session for November 16, 2011 to discuss the generic oral allegations of misconduct being made by Nils Ribi against Ms. Hammer and the allegations of on-going and extensive harassment which Ms. Hammer has made against Mr. Ribi.

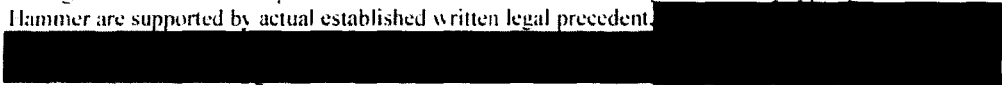
It is my understanding that for undisclosed reasons discussed in a Sun Valley City Council Executive Session on Monday, November 14, 2011, that the City Of Sun Valley will not call the Special Meeting and Executive Session I requested regarding the misconduct allegations being made against Ms. Hammer as well as the extensive harassment allegations Ms. Hammer has made against Mr. Ribi. However, instead, Ms. Hammer was told by yourself that the City Of Sun Valley will be appointing an independent party to conduct an investigation of all misconduct. I applaud your decision to investigate all allegations being made by Mr. Ribi against Ms. Hammer. We request and expect that the independent party will also perform a complete investigation into the serious allegations of harassment that Ms. Hammer has made against Mr. Ribi as part of the process, as well as Mr. Ribi's continued violation of Section 3.2 of Sun Valley Policies And Procedures related to Mr. Ribi's improper directives to Sun Valley employees and Mr. Ribi's intrusion into the day to day operations of the City Of Sun Valley. Ms. Hammer will cooperate with the investigation, will fully disclose any facts and documents being requested by the investigator and will discuss with the investigator and yourself any issues related to the investigation.

I want to reiterate our demand that any and all matters related to the investigation, any charges being made against Ms. Hammer and any meetings or hearings with or before yourself and the Sun Valley City Council remain highly confidential. As you have been made aware, we believe that Mr. Ribi's intent

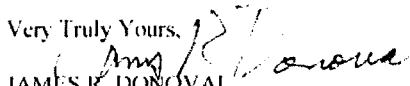
is to somehow publicly besmirch Ms. Hammer's reputation in retaliation for Ms. Hammer having disclosed and filed multiple and on-going harassment assertions against Mr. Ribí, and that the investigation against Ms. Hammer is nothing more than a sham "witch hunt" against Ms. Hammer by Mr. Ribí. I want to reiterate in the strongest terms possible that should any public disclosure be made of any allegations against Ms. Hammer of any sort, any public disclosure be made of the investigation being performed or any public disclosure be made of the proceedings that may be brought against Ms. Hammer, Ms. Hammer will consider Mr. Ribí and the City Of Sun Valley to have violated Ms. Hammer's due process rights and will prosecute Mr. Ribí and the City Of Sun Valley to the maximum extent allowed by law for both retaliatory discharge for bringing harassment claims against Mr. Ribí and for damage to Ms. Hammer's reputation.

In addition, I want to applaud your decision not to place Ms. Hammer on administrative leave until such time as the investigation and any formal proceedings against Ms. Hammer have been completed. As previously noted, you and City Clerk Kelly Eck sign all checks and for all payments out of City Of Sun Valley funds and you are personally in Sun Valley City Hall every day to monitor Ms. Hammer (in the office next door to yours) and the on-going activities of the City Of Sun Valley, thus there is no chance for Ms. Hammer to perform any acts of misconduct without your knowledge. As I have previously explained, the mere act of placing Ms. Hammer on administrative leave, for any reason, will of itself be an act of defaming Ms. Hammer for which there will never be satisfactory repair. It is evident that Mr. Ribí's intent is to damage Ms. Hammer's reputation in any way possible in retaliation for Ms. Hammer's claims for harassment against Mr. Ribí. I want to reiterate that we would consider any act of preemptive discipline such as putting Ms. Hammer on any form of leave, to also be an act of retribution for Ms. Hammer's harassment claims against Mr. Ribí and will also prosecute Mr. Ribí and the City Of Sun Valley for such action for retaliatory discharge and for damages to the fullest extent of the law.

Finally, thus far Mr. Ribí, and in some ways the City Of Sun Valley, has handled this entire matter in an extremely unprofessional manner, and in some ways already in violation of Ms. Hammer's due process rights. Last Friday, you and City Attorney Adam King were directed by Mr. Ribí and other Sun Valley City Council members to extend an offer of resignation to Ms. Hammer without any formal written charges having been provided to her and without any written evidence being produced to her. I would ask that should Ms. Hammer be accused of any misconduct violations, that Mr. Ribí and the City Of Sun Valley "cite its source" by providing Ms. Hammer with the specific Idaho statute, Sun Valley Municipal Code Section, Sun Valley Policy And Procedure section or other specific act or document which supports the allegations made against Ms. Hammer. Considering that we have clearly described Mr. Ribí's acts thus far as nothing more than a "witch hunt" in retaliation for the harassment claims made by Ms. Hammer against Mr. Ribí, and Mr. Ribí's long history of unsupported claims that he somehow has expertise in law and other municipal related matters, we hope that the City Of Sun Valley stands up for the highest standards of due process and ensures that Mr. Ribí's allegations of any type against Ms. Hammer are supported by actual established written legal precedent.



Very Truly Yours,


JAMES R. DONOVAL

Attorney At Law

cc: S. Hammer
J. Lamb
D. Briscoe
R. Youngman
F. Sutherland
M. Griffith
N. Ribí

JAMES R. DONOVAL

Attorney

4325 Fairway Nine Condos

PO Box 1499

Sun Valley, ID 83353

(312) 859-2029; (208) 721-7383

jdonoval@aol.com

STRICTLY CONFIDENTIAL

Not For Public Distribution

In Contemplation Of Litigation

November 16, 2011

Hon. Wayne Willich
Sun Valley City Hall
Sun Valley, ID 83353

Re: Sharon R. Hammer – City Of Sun Valley - Nils Ribí: Harassment Settlement

Mayor Willich:

As you are aware, on November 13, 2011, I served upon yourself and all current and about to be seated Sun Valley City Council members a letter seeking that you call a Special Sun Valley City Council meeting and Executive Session for November 16, 2011 to discuss the issues detailed in the letter related to Mr. Ribí's on-going harassment of Ms. Hammer. As I stated, Ms. Hammer had chosen not to previously proceed against Mr. Ribí for violation of the City Of Sun Valley harassment policies because of your personal promise that you had discussed the matter with Mr. Ribí and because of your personal promise that the City Of Sun Valley would take actions to protect Ms. Hammer from any further inappropriate behavior on the part of Mr. Ribí. It is apparent that due to the recent change of administration, Mr. Ribí now considers himself to be free to continue his prior history of abuse and harassment of Ms. Hammer.

It is my understanding that for undisclosed reasons discussed in a Sun Valley City Council Executive Session on Monday, November 14, 2011, that the City Of Sun Valley will not call the Special Meeting and Executive Session I requested to confront Mr. Ribí regarding his harassment of Ms. Hammer, nor is there any suggestion that the City Of Sun Valley intends to take action against Mr. Ribí or enter into any resolution to the allegations made against Mr. Ribí by Ms. Hammer.

In the previous letter, I clearly described that if all matters related to Mr. Ribí's harassment of Ms. Hammer were not fully resolved by Friday, November 18, 2011, that I would be filing a harassment law suit against Mr. Ribí and the City Of Sun Valley on November 21, 2011. In addition, as was made very clear in the letter, the failure to call the Special Meeting and

I had previously urged to you to investigate the allegations against Mr. Ribí regarding Mr. Ribí's violations of the Section 3.2, Section 7.4 and Section 7.5 of the Sun Valley Policies And Procedures (related to Mr. Ribí's improper directives towards Ms. Hammer and Sun Valley employees, Mr. Ribí's seeking and obtaining of confidential Sun Valley and Sun Valley employee information and Mr. Ribí's harassment of Ms. Hammer). You and the Sun Valley City Council should take note that Mr. Ribí was the only member of the Sun Valley City Council voting against your request for an independent investigation at the Monday, November 14, 2011 Sun Valley City Council meeting, evidencing Mr. Ribí's intent to avoid having to face these serious allegations regarding his own conduct. Now, since that meeting, we have been informed that Mr. Ribí continues to contact Sun Valley employees seeking confidential information regarding matters related to Ms. Hammer, in direct violation of both Section 3.2 and Section 7.4 of the Sun Valley Policies And Procedures, and even though you directed that an independent investigation of all matters is going to be performed.

We applaud your conducting of an internal investigation. However, due to the serious nature of the harassment claims being made by Ms. Hammer, and to disclose Mr. Ribí's abhorrent conduct and seek to protect not only Ms. Hammer but Sun Valley employees and the general public from Mr. Ribí, I still fully intend to file the mentioned harassment suit on behalf of Ms. Hammer on Monday, November 21, 2011 as previously discussed. As you are aware, that law suit will be a completely public proceeding and all allegations against Mr. Ribí and the City Of Sun Valley and any and all actions and findings related to Mr. Ribí and the City Of Sun Valley after the filing of such law suit will be public record. Please be advised that on behalf of Ms. Hammer, that in order to avoid such action, we are offering the following terms of settlement related to all allegations made by Ms. Hammer against Mr. Ribí and the City Of Sun Valley in order to prevent the filing of the aforementioned harassment law suit:

- a) Mr. Ribí will resign from the Sun Valley City Council for "personal reasons" effective the day after Mayor-Elect Briscoe is sworn in as Mayor Of Sun Valley. This will allow Mayor-Elect Briscoe to name Mr. Ribí's replacement;
- b) The City Of Sun Valley will pay Ms. Hammer the sum of one hundred thousand dollars (\$100,000.00) in settlement of all harassment claims Ms. Hammer may have against Mr. Ribí and/or the City Of Sun Valley;
- c) Mr. Ribí will agree to never contact Ms. Hammer in any form. Mr. Ribí will also agree that should he ever contact Ms. Hammer again that Ms. Hammer will be entitled to further proceed against him personally for liquidated and punitive damages in the sum of an additional one hundred thousand dollars (\$100,000.00) for further harassment and breach of his no-contact agreement.

We would still be willing to sit with the Sun Valley City Council in Executive Session, including with recently elected Sun Valley City Council members Michelle Griffith and Franz Suhadolnik and discuss the matter. However, should I not be provided written confirmation that

all terms described herein have been accepted by the City Of Sun Valley and Mr. Ribí by 12:00 p.m. (noon) Friday November 18, 2011, or that some other amicable settlement has been accepted by Ms. Hammer or is being negotiated - on Monday November 21, 2011, on behalf of Ms. Hammer I will file in the Blaine County Court the harassment and intentional infliction of emotional distress action previously described against Mr. Ribí and the City Of Sun Valley. The law suit will detail all acts of Mr. Ribí in harassing Ms. Hammer, [REDACTED]

[REDACTED] I have attached a courtesy draft copy of the Verified Complaint that we propose will be filed on Monday, November 21, 2011, so that you may understand the serious nature of the claims being made by Ms. Hammer against Mr. Ribí and the City Of Sun Valley.

[REDACTED] And, there is no question that had any other employee of the City Of Sun Valley performed the various acts of verbal, mental and threatened physical abuse that Mr. Ribí has done over the course of at least the last three (3) years that such employee would have been severely disciplined or terminated from their employment position. Mr. Ribí should be treated no differently. As has been evidenced by recent allegations regarding Penn State University, public officials and employees have an unquestionable duty to make the public aware of any allegations related to a public official's acts endangering the safety of individuals and to seek immediate removal of such officials and report such acts to appropriate authorities. [REDACTED]

[REDACTED] Should Mr. Ribí not resign as suggested, and subsequently perform any further acts of impropriety or injury to City Of Sun Valley employees, and in particular to Ms. Hammer, [REDACTED] it is certainly now the City Of Sun Valley and the individual members of the Sun Valley City Council who will be held responsible.

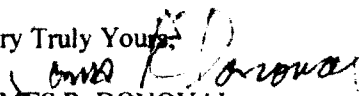
The Sun Valley City Council has no authority to force Mr. Ribí's resignation. However, Idaho State Statute 19-4101 provides for the removal of a public officer, after trial by the local county prosecutor, for actions of willful misconduct. Should Mr. Ribí refuse to resign, in order to protect City Of Sun Valley employees, in particular Ms. Hammer, and the public in general, I, and Ms. Hammer, believe that you, and the remaining Sun Valley City Council members are obligated to forward to Blaine County Prosecutor Jim J. Thomas a request to seek removal of Mr. Ribí from his position as a Sun Valley City Council member for acts of willful misconduct related to the harassment of Ms. Hammer in violation of Section 7.5 of the Sun Valley Policies And Procedures. In addition, as is detailed in the Verified Complaint, Mr. Ribí's multiple violations of both Section 3.2 (related to authority to direct Sun Valley employees) and Section 7.4 (related to disclosure of confidential Sun Valley and Sun Valley employee information) of the Sun Valley Policies And Procedures should also subject Mr. Ribí to removal from office pursuant to Idaho Statute 19-4101 for additional and separate willful misconduct by Mr. Ribí.

If the City Of Sun Valley and the individual members of the Sun Valley City Council do not either obtain Mr. Ribí's resignation or seek prosecution of Mr. Ribí for willful misconduct, please be on notice that the City Of Sun Valley and the individual members of the Sun Valley City Council will bear responsibility for any future actions of impropriety or misconduct on the part of Mr. Ribí and any physical or emotional injury Mr. Ribí subsequently causes.

Please note that upon the filing of the harassment law suit against the City Of Sun Valley and Mr. Ribí, the Verified Complaint and this letter will be disclosed to the public, including that both will be provided to the Idaho Mountain Express, the Times-News and the Idaho Statesman for publication, in an effort for the public to take notice of Mr. Ribí's potential danger to Ms. Hammer, City Of Sun Valley employees, and the general public, and to disclose the failure of the City Of Sun Valley to take any actions to protect such individuals from further potential harassment, threats and physical harm from Mr. Ribí.

On a personal note, Ms. Hammer wishes to thank you for all of your efforts in seeking to ensure that Ms. Hammer has been protected from Mr. Ribí and his insults, abuses, misconduct and attacks during your term as Mayor. As has been stated, Ms. Hammer has refrained from seeking the legal recourse she is certainly entitled to against Mr. Ribí based in large part on your personal promises and integrity. However, with the impending change of administration and that Mr. Ribí has now made clear that somehow he is "in charge" and "things will be done differently", Ms. Hammer has no other recourse to protect herself and other Sun Valley employees but to bring the harassment action, unless Mr. Ribí resigns.

Very Truly Yours,


JAMES R. DONOVAL
Attorney At Law

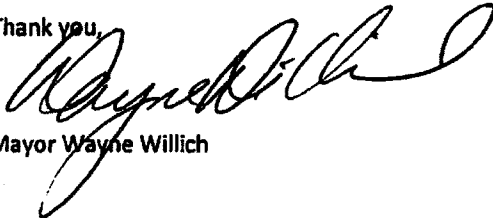
cc: S. Hammer
J. Lamb
D. Briscoe
R. Youngman
F. Suhadolnik
M. Griffith
N. Ribí

November 18, 2011

Dear Sharon:

Effective immediately you are being placed on paid administrative leave until further notice from your position as City Administrator and paid on-call firefighter/EMT. Please deliver all City of Sun Valley property in your possession to City Hall immediately, including but not limited to cell phones, keys, iPads, computers, computer files/computerized records, papers, telephones, pagers, fire equipment, EMT equipment, and any other property in your possession which belongs to the City of Sun Valley. This is not a disciplinary action.

Thank you,

A handwritten signature in black ink, appearing to read "Wayne Willich", written over the printed name.

Mayor Wayne Willich

EXHIBIT F
(FILED SEPARATELY UNDER SEAL)

EXHIBIT J₉₅₀

PERSONAL AND CONFIDENTIAL

TO: Sharon Hammer, City Administrator
FROM: Mayor Wayne Willich
DATE: December 16, 2011
RE: **NOTICE OF CONTINUED PAID ADMINISTRATIVE LEAVE
PENDING INVESTIGATION**

YOU ARE HEREBY NOTIFIED THAT subsequent to placing you on paid leave, we have received information indicating that you may have acted, omitted acts, or otherwise performed in ways which are contrary to the expectations or the standards of conduct for the City of Sun Valley employees.

Because the matter under investigation potentially affects other employees, we cannot provide additional details about the behavior that is of concern at this time.

THEREFORE, UNTIL THE INVESTIGATION INTO SUCH INFORMATION IS SUFFICIENTLY COMPLETED, YOU ARE HEREBY CONTINUED ON PAID LEAVE FROM PERFORMANCE OF YOUR CURRENT DUTIES WITH PAY.

Pending the outcome of our inquiry, **you are directed** not to perform any of the duties of your employment other than those necessary to preserve the City's interests in your absence. Further, you should not make any representations or statements as a representative of the City of Sun Valley. You are further directed not to make any contact (directly, indirectly, personally or through any other person) with any person who may have filed a complaint against you or been a witness to any such event. **This is a confidential personnel matter at this point, and you should respect that confidentiality until our inquiry is complete and you have been able to respond to our initial determinations. This paid leave is not a disciplinary action.**

You are also directed, as a condition of your continued receipt of your pay during this period of paid leave, to respond honestly to any inquiries from me, or any other individual designated by me, concerning any aspect of this investigation and any matters of business which are within your knowledge and within the normal course of your employment, as set forth in the Notice of Administration served on you as well.

YOU ARE FURTHER DIRECTED THAT effective immediately, and during the period of your paid leave, you are not authorized to be present in any of the private offices of any City facility which are not accessible to any other member of the general public, without express written permission from me or the official in control of such facility. Finally, you are directed not to access or utilize any City computer, computer system, network resource or

application (however characterized) or remove any documents or other City property (excluding only your personal effects unconnected with City operations) from any City facility.

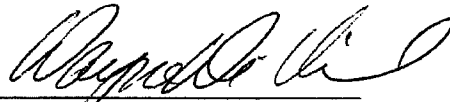
You are hereby notified that any violation of the directives set forth in this Notice may result in separate additional consequences.

In the event the investigation indicates personnel action is warranted, you will be given an opportunity to present any response to the information received as a result of the on-going investigation before a final decision is made regarding the action to be taken.

If you do not desire to accept this continued paid leave pending the outcome of the on-going investigation, but prefer that your employment records with the City of Sun show that you terminated your employment by resignation, please submit your written resignation to me and your resignation will be documented and your final paycheck will be prepared and delivered to you.

Please be advised that since this matter involves potential personnel action, you are requested to respect its confidential nature until all steps in the process have been completed.

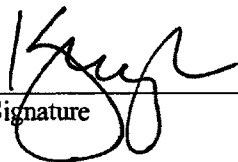
DATED this 16th day of December 2011.



Wayne Willich
Mayor

Affirmation of Service

Service of the foregoing Notice was delivered via U.S. Mail to Attorney James Donoval, counsel for Sharon Hammer on this ^{7th}~~16th~~ day of December, 2011.



Signature

PERSONAL AND CONFIDENTIAL

TO: Sharon Hammer, City Administrator
FROM: Wayne Willich, Mayor
DATE: December 16, 2011
RE: **NOTICE OF ADMINISTRATIVE INVESTIGATION; ORDER TO PARTICIPATE
IN INTERVIEW PROCESS AND ADVICE OF RIGHTS**

YOU ARE HEREBY ADVISED that you may be questioned as a part of an official investigation. You will be asked questions specifically directed and narrowly related to the performance of your official duties. You are entitled to all the rights and privileges guaranteed by the laws and the Constitution of this state and the Constitution of the United States, including the right not to be compelled to incriminate yourself and to have an attorney of your choice present during questioning. **Accordingly, you are hereby ordered pursuant to Garrity v New Jersey, 385 U.S. 493 (1967), to submit to this interview and are specifically advised that nothing you say in response to questions posed to you during this interview will be used against you in any subsequent criminal prosecution.**

YOU ARE FURTHER ADVISED that if you refuse to answer questions relating to the performance of your official duties, you will be subject to administrative charges which may result in your dismissal from employment. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to subsequent administrative charges and violations of the City of Sun Valley's policies and procedures as well as the City of Sun Valley Personnel Policy.

You are hereby notified that you are hereby placed on a paid leave status, and that, as a condition of continued receipt of pay during this paid leave, you are directed to assist this agency concerning matters you were addressing as an active employee and to provide the City of Sun Valley with a telephone number and address where you will be available at all times during said paid leave. **You are further directed to fully cooperate with and honestly and fully respond to any inquiries you receive from the Mayor or any other person involved in this administrative investigation. Further, if you provide false, misleading or incomplete information in answering any questions during this procedure, you may subject yourself to administrative action, up to and including your dismissal from employment with the City of Sun Valley.**

Once you have had an opportunity to review this Notice, and in the event you do not intend to comply with this order to participate in this aspect of the administrative investigation, you are directed to notify me immediately. As previously noted herein, in the event you refuse to participate in or to answer questions relating to the performance of your official duties, you may be subject to administrative action, up to and including dismissal from your employment with this agency. However, that is a decision you must make.

YOU ARE FURTHER DIRECTED NOT TO MAKE CONTACT WITH ANY PERSON WHO MAY HAVE FILED A COMPLAINT AGAINST YOU OR WHO HAS BEEN A WITNESS TO ANY SUCH EVENT, WHETHER IN PERSON, THROUGH A THIRD PARTY, BY TELEPHONE, OR IN ANY OTHER MANNER NOT SPECIFICALLY STATED HEREIN.

If, after considering this Notice, you prefer that your employment records with the City show that you terminated your employment by resignation, please submit your written resignation to me, so that your records may be properly documented and your final paycheck will be prepared and delivered to you.

Dated this 16th Day of December, 2011.


Wayne Willich, Mayor

Affirmation of Service

Service of the foregoing Notice was delivered via U.S. Mail to Attorney James Donoval, counsel for Sharon Hammer on this 16th day of December, 2011.


Signature

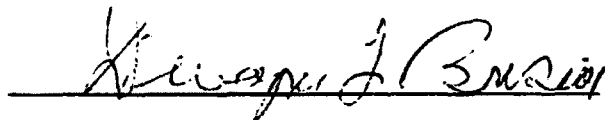
I, Mayor Wayne Willich, do hereby authorize Kirtlan G. Naylor of the law firm Naylor & Hales, P.C. to notify the Blaine County Prosecuting Attorney with regard to the information and facts discovered in an employment investigation that may be the subject of criminal conduct.



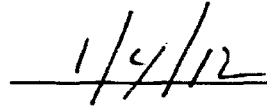
Wayne Willich

12/16/2011
Dated

I, Mayor Dewayne Briscoe, do hereby authorize Kirtlan G. Naylor of the law firm Naylor & Hales, P.C. to notify the Blaine County Prosecuting Attorney with regard to the information and facts discovered in an employment investigation that may be the subject of criminal conduct.



Dewayne Briscoe



Dated

EXHIBIT J

SV 343

EXHIBIT J

PERSONAL AND CONFIDENTIAL

TO: Sharon Hammer, City Administrator
FROM: Mayor Dewayne Briscoe
DATE: January 4, 2012
RE: **NOTICE OF PAID ADMINISTRATIVE LEAVE
PENDING INVESTIGATION**

YOU ARE HEREBY NOTIFIED THAT subsequent to placing you on paid leave, we have received information indicating that you may have acted, omitted acts, or otherwise performed in ways which are contrary to the expectations or the standards of conduct for the City of Sun Valley employees.

Because the matter under investigation potentially affects other employees, we cannot at this time provide additional details about the behavior that is of concern at this time.

THEREFORE, UNTIL THE INVESTIGATION INTO SUCH INFORMATION IS SUFFICIENTLY COMPLETED, YOU ARE HEREBY ON PAID LEAVE FROM PERFORMANCE OF YOUR CURRENT DUTIES WITH PAY.

Pending the outcome of our inquiry, you are directed not to perform any of the duties of your employment. Further, you should not make any representations or statements as a representative of the City of Sun Valley. You are further directed not to make any contact (directly, indirectly, personally or through any other person) with any person who may have filed a complaint against you or been a witness to any such event. **This is a confidential personnel matter at this point, and you should respect that confidentiality until our inquiry is complete and you have been able to respond to our initial determinations. This paid leave is not a disciplinary action.**

You are also directed, as a condition of your continued receipt of your pay during this period of paid leave, to respond honestly to any inquiries from me, or any other individual designated by me, concerning any aspect of this investigation and any matters of business which are within your knowledge and within the normal course of your employment.

YOU ARE FURTHER DIRECTED THAT effective immediately, and during the period of your paid leave, you are not authorized to be present in any of the private offices of any City facility which are not accessible to any other member of the general public, without express written permission from me or the official in control of such facility. Finally, you are directed not to access or utilize any City computer, computer system, network resource or application (however characterized) or remove any documents or other City property (excluding

only your personal effects unconnected with City operations) from any City facility. Further, if you have any records, documents, or other papers (in any format, including electronic or paper) in your possession, that are City records or public records, which you have not received in your possession pursuant to a duly authorized public records request, you are to return all such to the City immediately. You are to also immediately return to the City all keys, credit cards, equipment, including fire department equipment, computers, laptops, iPads, and any and all things owned by the City in your control or possession. Retention of any such documents and things is not acceptable.

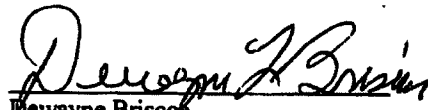
You are hereby notified that any violation of the directives set forth in this Notice may result in separate additional consequences, including the forfeiture of continued pay or termination.

In the event the investigation indicates personnel action is warranted for your conduct or for cause, you will be given an opportunity to present any response to the information received as a result of the on-going investigation before a final decision is made regarding the action to be taken.

If you do not desire to accept this continued paid leave pending the outcome of the on-going investigation, but prefer that your employment records with the City of Sun show that you terminated your employment by resignation, please submit your written resignation to me and your resignation will be documented and your final paycheck will be prepared and delivered to you.

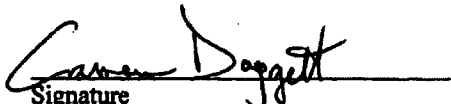
Please be advised that since this matter involves potential personnel action, you are requested to respect its confidential nature until all steps in the process have been completed.

DATED this 4th day of January, 2012.


Dewayne Briscoe
Mayor

Affirmation of Service

Service of the foregoing Notice was delivered by hand delivery to Sharon Hammer on this
5th day of January, 2012.


Signature

PERSONAL AND CONFIDENTIAL

TO: Sharon Hammer, City Administrator
FROM: Dewayne Briscoe, Mayor
DATE: January 4, 2012
RE: **NOTICE OF ADMINISTRATIVE INVESTIGATION; ORDER TO PARTICIPATE
IN INTERVIEW PROCESS AND ADVICE OF RIGHTS**

YOU ARE HEREBY ADVISED that you may be questioned as a part of an official investigation. You will be asked questions specifically directed and narrowly related to the performance of your official duties. You are entitled to all the rights and privileges guaranteed by the laws and the Constitution of this state and the Constitution of the United States, including the right not to be compelled to incriminate yourself and to have an attorney of your choice present during questioning. **Accordingly, you are hereby ordered pursuant to Garrity v New Jersey, 385 U.S. 493 (1967), to submit to this interview and are specifically advised that nothing you say in response to questions posed to you during this interview will be used against you in any subsequent criminal prosecution.**

YOU ARE FURTHER ADVISED that if you refuse to answer questions relating to the performance of your official duties, you will be subject to administrative charges which may result in your dismissal from employment. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to subsequent administrative charges and violations of the City of Sun Valley's policies and procedures as well as the City of Sun Valley Personnel Policy.

You are hereby notified that you are hereby placed on a paid leave status, and that, as a condition of continued receipt of pay during this paid leave, you are directed to assist this agency concerning matters you were addressing as an active employee and to provide the City of Sun Valley with a telephone number and address where you will be available at all times during said paid leave. You are further directed to fully cooperate with and honestly and fully respond to any inquiries you receive from the Mayor or any other person involved in this administrative investigation. Further, if you provide false, misleading or incomplete information in answering any questions during this procedure, you may subject yourself to administrative action, up to and including your dismissal from employment with the City of Sun Valley.

NOTICE OF ADMINISTRATIVE INVESTIGATION - 1

EXHIBIT L

SV 346

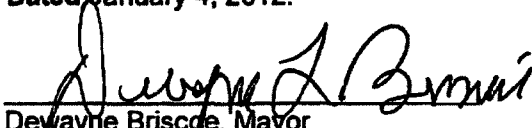
EXHIBIT J 959

Once you have had an opportunity to review this Notice, and in the event you do not intend to comply with this order to participate in this aspect of the administrative investigation, you are directed to notify me immediately. As previously noted herein, in the event you refuse to participate in or to answer questions relating to the performance of your official duties, you may be subject to administrative action, up to and including dismissal from your employment with this agency. However, that is a decision you must make.

YOU ARE FURTHER DIRECTED NOT TO MAKE CONTACT WITH ANY PERSON WHO MAY HAVE FILED A COMPLAINT AGAINST YOU OR WHO HAS BEEN A WITNESS TO ANY SUCH EVENT, WHETHER IN PERSON, THROUGH A THIRD PARTY, BY TELEPHONE, OR IN ANY OTHER MANNER NOT SPECIFICALLY STATED HEREIN.

If, after considering this Notice, you prefer that your employment records with the City show that you terminated your employment by resignation, please submit your written resignation to me, so that your records may be properly documented and your final paycheck will be prepared and delivered to you.

Dated January 4, 2012.


Dewayne Briscoe, Mayor

Affirmation of Service

Service of the foregoing Notice was delivered via hand-delivery to Sharon Hammer on this ^{5th} 4th day of January, 2012.


Signature



PRESS RELEASE JANUARY 16, 2012

CITY OF SUN VALLEY

The day after a contested court hearing, including motions to stop Plaintiff's harassing discovery requests and sanction Attorney James Donovan, Sharon Hammer voluntarily dismissed her lawsuit against the City of Sun Valley, Councilman Nils Ribi, City Attorney Adam King and Councilman Robert Youngman. Ms. Hammer's two other lawsuits against the City of Sun Valley are still active.

City of Sun Valley officials are glad to see that this unfounded lawsuit has been dismissed. While their counsel, Kirtian Naylor, communicated all settlement offers by Ms. Hammer to the City, this resolution of a voluntary dismissal by Hammer is the appropriate action.

At no time did the City's Insurer, ICRMP, threaten that legal counsel or insurance coverage for the City was in jeopardy, contrary to allegations by Hammer.

Mr. Naylor stated in court at the hearing, held January 11, that the City's investigative report, which has been the subject of much discussion in the news and court filings, has been turned over to the Blaine County Prosecuting Attorney for an independent review of possible criminal conduct. For that reason, it cannot be released for public consideration at this time.

The City of Sun Valley appreciates the patience of its citizens as appropriate steps are taken in this matter. Mayor Briscoe is committed to ensuring a strong and effective administration to conduct the business of the City. The dismissal of this lawsuit will allow the administration to now focus on the governing of the City and providing appropriate services to the citizens of Sun Valley.

P.O. Box 416 • SUN VALLEY, ID 83353 • 208-622-4438 • FAX 208-622-3401
www.sunvalley.govoffice.com

EXHIBIT M

SH-TIMELINE 000618

EXHIBIT J₉₆₁

**COUNCIL MEETING MINUTES
OF THE MAYOR AND CITY COUNCIL'S OF KETCHUM AND SUN VALLEY
IN THE COUNCIL CHAMBERS - 81 ELKHORN ROAD
CITY OF SUN VALLEY, IDAHO
JANUARY 19, 2012 1:00 P.M.**

ORIGINAL

The Mayor's and the City Council's of Sun Valley and Ketchum, Blaine County, State of Idaho, met in a Joint Council Meeting in the Sun Valley City Hall Council Chambers on January 19, 2012 1:00 p.m.

**CALL TO ORDER
ROLL CALL
CITY OF KETCHUM**

PRESENT: Mayor Randy Hall, Council member Baird Gourlay.

ABSENT: Council member Larry Helzel, Council member Nina Jonas, Council member Curtis Kemp.
The City of Ketchum did not have a quorum.

**ROLL CALL
CITY OF SUN VALLEY**

PRESENT: Mayor Dewayne Briscoe, Council President Bob Youngman, Council member Nils Ribi,
Council member Michelle Griffith and Council member Franz Suhadolnik.

ABSENT: None

PLEDGE OF ALLEGIANCE
Ketchum Mayor Randy Hall led the Pledge of Allegiance.

MAYOR COMMENT
Mayor Briscoe made comments.

PUBLIC COMMENT
Members of the public made comment.

Sun Valley Marketing Alliance (SVMA) Quarterly Report
Arlene Schieven gave a report/update on the Sun Valley Marketing Alliance.
Council President Bob Youngman made comments.
Arlene Schieven responded to questions from Bob Youngman.
Ketchum Mayor Randy Hall made comments.
City of Ketchum Council member Baird Gourlay made comments.
Council members Franz Suhadolnik and Nils Ribi made comments.

Sustain Blaine Project Proposal - Purchase of Remote Polling Devices
Harry Griffith and Joys Kasputys of Sustain Blaine gave a presentation.
Council member Michelle Griffith recused herself, due to a potential conflict of interest.
Council members made comments.
Ketchum Mayor Randy Hall made comments.
City of Ketchum Community Development Director Lisa Horowitz made comments.
Ketchum Council member Baird Gourlay made comments.

JOINT PORTION OF MEETING WITH CITY OF KETCHUM ENDED AT 1:50 P.M.

Idaho Power Presentation
Dan Olmstead with Idaho Power introduced the team that has been working together on this project. Overall Project Manager Tom Barber, Consultant Mike Pepper, Area Manager Bo Hanchee, Senior Planning Engineer Brian Hobson, Community Advisory Committee Lloyd Betts, Len Harlig and Nils Ribi. Olmstead stated Sun Valley Company Director of Resorts and Resort Development Wally Huffman also participated in the Idaho Power meetings.
Idaho Power Senior Planning Engineer Brian Hobson began the Presentation.
Council President Bob Youngman asked questions, to which Brian Hobson responded.
Council members Michelle Griffith and Franz Suhadolnik asked questions.

**RECESS
MOTION**

Council member Nils Ribi moved to enter into a 5 minutes recess, seconded by Council President Bob Youngman.

AYES: Council President Bob Youngman, Council member Nils Ribi, Council member Michelle Griffith and Council member Franz Suhadolnik.

NAYES: None

The Mayor declared the motion approved.

Citizens Advisory Committee member Lynn Harlig commented on the Idaho Power presentation.

Amendment to Sun Valley Marketing Alliance Bylaws

City of Sun Valley representative on the Sun Valley Marketing Alliance Board Brooke Wojcik made comments.

Council member Franz Suhadolnik asked questions.

Council member Nils Ribi made comments.

Public Hearing- Ordinance 441 Sun Valley Company Lot 28A Rezone No. ZMA 2011-02

Community Development Director Mark Hofman gave a presentation.

Garth McClure with Benchmark Associates made comments.

Council member Nils Ribi asked questions.

City attorney Adam King made comments

MOTION

Council member Michelle Griffith moved to waive the 3 readings of Ordinance 441 Sun Valley Company Lot 28A Rezone No. ZMA 2011-02, seconded by Council President Bob Youngman.

AYES: Council President Bob Youngman, Council member Nils Ribi, Council member Michelle Griffith and Council member Franz Suhadolnik.

NAYES: None

The Mayor declared the motion approved.

Ordinance 441 Sun Valley Company Lot 28A Rezone No. ZMA 2011-02

MOTION

Council member Nils Ribi moved to adopt Ordinance 441 White Clouds Lot 28A Zoning map Amendment as presented, seconded by Council President Bob Youngman.

AYES: Council President Bob Youngman, Council member Nils Ribi, Council member Michelle Griffith and Council member Franz Suhadolnik.

NAYES: None

The Mayor declared the motion approved.

Public Hearing- Sun Valley Company Parcel E Plat Amendment Application No. SUBPA 2011-03

Community Development Director Mark Hofman and City Attorney Adam King made comments.

MOTION

Council member Nils Ribi moved to adopt Plat Amendment Lot 28A and Parcel E White Clouds Corrected Subdivision, 100 and 200 Sun Peak Drive, Application No. SUBPA 2011-03 Findings of Fact Conclusions of Law as presented, seconded by Council President Bob Youngman.

AYES: Council member Nils Ribi, Council member Michelle Griffith, Council President Bob Youngman and Council member Franz Suhadolnik.

NAYES: None

The Mayor declared the motion approved.

Trimper Preliminary Plat Application No. SUBPP 2011-02

Community Development Director Mark Hofman gave a presentation.

Garth McClure with Benchmark Associates made comments.

MOTION

Council member Franz Suhadolnik moved to approve Findings of Fact, Conclusions of Law, Decisions and Conditions of Approval, Land Subdivision Trimper Lot, Split Lot 26A, Dollar Mountain Subdivision, Preliminary Plat Application No. SUBPP 2011-02, seconded by Council President Bob Youngman.

AYES: Council President Bob Youngman, Council member Nils Ribi, Council member Michelle Griffith and Council member Franz Suhadolnik.

NAYES: None

The Mayor declared the motion approved.

Police Vehicle and Equipment Dispersal

Police Chief Cam Daggett made comments.

Mayor Dewayne Briscoe authorized the transfer of property to the City of Bellevue.

Council Liaison Assignments

Mayor and Council discussed liaison appointments and assignments.

MOTION

Council member Michelle Griffith moved to approve the entire slate as suggested by the Mayor of Council Liaison appointments and assignments, seconded by Council member Nils Ribi.

AYES: Council President Bob Youngman, Council member Nils Ribi, Council member Michelle Griffith and Council member Franz Suhadolnik.

NAYES: None

The Mayor declared the motion approved.

Council Priorities

Council member Michelle Griffith made comments.

Council President Bob Youngman made comments.

Mayor Briscoe stated Council Priorities will be revisited at the March 15 Council meeting. Council members will be reminded to review the spreadsheet on March 5th, 2012 and to submit any desired revisions to the Mayor promptly.

Ochi Art Installation on Festival Meadows

Pauli Ochi of Ochi Gallery made comments regarding the art installation.

Council members Michelle Griffith and Nils Ribi made comments.

Year End Financial Report FY 11

City Treasurer Michelle Frostenson made comments.

City Attorney Adam King made comments.

Council member Nils Ribi asked questions.

Financials

Council member Franz Suhadolnik made comments.

Council President Bob Youngman made comments.

Mayor Briscoe asked Council for consensus to move the Executive Session on the agenda between items 12 and 12a. to which they agreed unanimously.

Council Minutes November 17, December 2, 15, 2011.

Council member Nils Ribi directed changes to the November 17, 2011 Minutes.

MOTION

Council member Nils Ribi moved to approve the Minutes of November 17 with the changes directed, approve the Minutes of December 2 and 15, 2011, receive and file the November and December paid invoice reports, receive and file the November and December Financial reports, and authorize payment of bills and payroll for February 2012, when due, seconded by Council member Michelle Griffith.

AYES: Council President Bob Youngman, Council member Nils Ribi, Council member Michelle Griffith and Council member Franz Suhadolnik.
NAYES: None

The Mayor declared the motion approved.

Willow Creek Ponds

Council member Franz Suhadolnik made comments.

MOTION

Council member Franz Suhadolnik moved to postpone definitely to date certain February 16, 2012 Agenda Item "Willow Creek Ponds", seconded by Council member Nils Ribi.

AYES: Council President Bob Youngman, Council member Nils Ribi, Council member Michelle Griffith and Council member Franz Suhadolnik.
NAYES: None

The Mayor declared the motion approved.

EXECUTIVE SESSION Pursuant to Idaho Code 67-2345 1 (b, d, f,) b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student; d) To consider records that are exempt from disclosure as provided in chapter 3, title 9, Idaho Code; f) To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement;

MOTION

Council President Bob Youngman moved to enter into Executive Session, pursuant to Idaho Code 67-2345 1 (b, d, f), seconded by Council member Franz Suhadolnik.

AYES: Council President Bob Youngman, Council member Nils Ribi, Council member Michelle Griffith and Council member Franz Suhadolnik.
NAYES: None

The Mayor declared the motion approved.

Executive Session began at 4:04 p.m.

Executive Session ended at 5:25 p.m.

City Administrator Contract

Mayor Briscoe announced "I have made the decision to take action as provided by the City Administrator Employment Agreement to terminate the City Administrator under the provision in Section 3, Paragraph A, which provides for immediate termination and a lump sum severance pay equal to six months base salary. The Agreement further provides that according to this condition, the City Administrator waives her right to bring a claim of any kind for damages against the City of Sun Valley arising from such a termination. With this action, I will now be able to turn my attention to the management of the City's business with a City Administrator for my administration."

MOTION

Council member Franz Suhadolnik moved to approve the termination of City Administrator Sharon Hammer's Employment Contract, seconded by Council member Michelle Griffith.

AYES: Council President Bob Youngman, Council member Nils Ribi, Council member Michelle Griffith and Council member Franz Suhadolnik.
NAYES: None

The Mayor declared the motion approved.

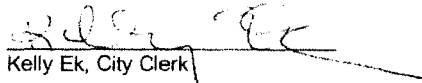
**ADJOURNMENT
MOTION**

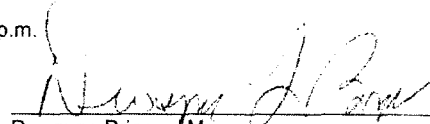
Council member Nils Ribi moved to adjourn, seconded by Council member Michelle Griffith.

AYES: Council President Bob Youngman, Council member Nils Ribi, Council member Michelle Griffith and Council member Franz Suhadolnik.

NAYES: None

The Mayor declared the meeting adjourned at 5:30 p.m.


Kelly Ek, City Clerk


Dewayne Briscoe, Mayor



City of Sun Valley City Administrator Sharon Hammer Terminated

Statement to City Council January 19 by Mayor Briscoe

"I have made the decision to take action as provided by the City Administrator Employment Agreement to terminate the City Administrator under the provision in Section 3, Paragraph A, which provides for immediate termination and a lump sum severance pay equal to six months base salary. The Agreement further provides that according to this condition, the City Administrator waives her right to bring a claim of any kind for damages against the City of Sun Valley arising from such a termination. With this action, I will now be able to turn my attention to the management of the City's business with a City Administrator for my administration." The City Council, by unanimous vote (4-0) confirmed the action recommended, and directed Mayor Briscoe to take such action as authorized by the employment agreement.

P.O. Box 416 • SUN VALLEY, ID 83353 • 208-622-4438
FAX 208-622-3401 www.sunvalley.govoffice.com

EXHIBIT O

EX E
HAMMER 000327

EXHIBIT J 967



August 23, 2012

Mr. C. Clayton Gill
Moffatt Thomas Barrett Rock & Fields, CHTD
U.S. Bank Plaza
101 S. Capital Blvd. 10th Floor
Boise, Idaho 83702-7710

Re: City of Sun Valley Forensic Investigation

Dear Mr. Gill:

Moffatt Thomas Barrett Rock & Fields, CHTD ("Moffatt Thomas"), on behalf of its client the City of Sun Valley ("City"), engaged Hagen Streiff Newton & Oshiro, Accountants P.C., Certified Public Accountants ("HSNO") to perform a forensic audit of each of the departments of the City. Specifically, we investigated the: (1) Administration Department; (2) Building Department; (3) Community Development Department; (4) Fire Department; (5) Police Department; and (6) Street Department.

SCOPE

The scope of our investigation was limited to include the following topical areas:

- (1) Usage of City-issued credit cards and fuel cards for any improper purposes, including accuracy and adequacy of documentation supporting usage of City-issued credit cards and fuel cards;
- (2) Accuracy of hours reported to payroll for non-exempt employees or others paid on an hourly basis, including accuracy and adequacy of back-up documentation supporting compensable hours reported for those individuals;
- (3) Accuracy of hours reported to payroll for exempt salaried employees doing work for other departments on an hourly pay basis, including accuracy and adequacy of back-up documentation supporting compensable hours reported for those individuals;
- (4) Accuracy of vacation hours claimed by employees, with special emphasis on accuracy of vacation hours reported by employees who cashed in unused vacation hours, including accuracy and adequacy of back-up documentation supporting vacation hours taken by employees;
- (5) Any misappropriation or improper usage of City property;
- (6) Accuracy of payments made to employees or other individuals for reimbursement of expenses related to travel, training, or entertainment, including accuracy and adequacy of documentation supporting any claim for reimbursement; and

Atlanta, Boston, Chicago, Dallas, Emeryville, Jersey City, Los Angeles, Miami, New York, Newport Beach,
Providence, Sacramento, Salt Lake City, San Francisco, Seattle, Stamford, Washington, D.C.

1325 4th Avenue, Suite 1730 | Seattle, 98101 | Phone: (206) 447-3338 | Fax: (206) 447-3007 | Web: www.hsno.com

EXHIBIT P

SV 2718
EXHIBIT J 968

Mr. Clay Gill
August 23, 2012

(7) Any evidence supporting any improper business dealings between the City and any person that is related to a City employee by blood-marriage within the second degree.

The review period for our investigation of the topics listed above was 2009 through 2011.

Our review, investigation and analysis included a review of the records and information provided by the City of Sun Valley, Idaho, to us at our request. We relied on the accuracy of the documents, records and information provided to us.

As part of the scope of our investigation, we performed various analytical procedures on the information provided to test the validity of the information provided, as we considered appropriate in the circumstances and within the scope of our assignment. The scope of our engagement did not include the investigation or determination as to the authenticity of documents, possibility of alteration of documents, completeness of all documents and records, or possibility of forgery of signatures on documents. Although we have performed a review, testing and analysis of the City's records, we have not audited the City's financial statements in accordance with generally accepted auditing standards. Therefore, we express no opinion on the data or documents supplied by the City. Our report is dependent on the accuracy of the information provided to us. However, with those limitations disclosed, and based solely upon our review of the documents and other data provided to us, the analytical procedures we performed, and interviews of those involved in the custody of the documents and other electronic information provided to us, we did not find any evidence of alterations or deletions to the documents or other electronic information provided to us.

This report is based on documents and information provided to us as of the date of our report. We will, if requested by the City of Sun Valley, continue to analyze any additional documents or other information that is provided to us subsequent to the issuance of this report and provide a supplemental report if necessary.

EXECUTIVE SUMMARY

This Executive Summary is intended to be a summary of the more detailed findings and conclusions set forth in the various exhibits and schedules to this report. The summary of our findings, conclusions and recommendations resulting from our forensic investigation are as follows:

I. General Financial Governance of the City of Sun Valley

The Idaho Code sets forth various statutes governing municipal city government agencies such as the City of Sun Valley. Chapter 10, Title 50 of the Idaho Code provides specific governance related to the City of Sun Valley's financial matters. Idaho Code Section 50-1017 provides, in part, that "All claims against the city shall be approved by the city council prior to the payment of such claims and the city council shall establish and maintain an adequate and reasonable system on internal accounting controls."

Idaho Code Section 50-208, Duties of Treasurer, provides, in part, "The treasurer of each city shall be the custodian of all moneys belonging to the city ... render an account to the city council, under oath, showing the state of the treasury at the date of such account and the balance of money in the treasury; (s) he shall also accompany such accounts with a statement of all receipts and disbursements."

Mr. Clay Gill
August 23, 2012

A. Summary of Findings Regarding the General Financial Governance of the City of Sun Valley

Following is a summary of findings developed during our investigation.

1. Control and Approval of City of Sun Valley Disbursements

The process for the documentation and approval of expenditures by the City of Sun Valley in effect during the years 2009 through 2011 was intended to be as follows:

- The department head or other manager in the department would review documentation and approve appropriate expenditures by completing and signing an approval form summarizing each expenditure for that department (referred to as a yellow sheet). The department head or manager would attach to the yellow sheet any supporting documentation, such as invoices, credit card statements, receipts for each credit card charge, and fuel card statements.
- The Finance Manager/Treasurer would review documentation and account classification of the expenditure and general description of the expenditure category and complete any additional necessary information.
- The City Administrator would review and approve the expenditures by signing the yellow sheet.
- The yellow sheet and all documentation would then be presented to the Mayor for review and signature.
- A designated City Council member, on a rotating basis, would review and provide the final approval signature.
- The documents would then be returned to the Finance Manager/Treasurer for filing.
- The Treasurer periodically prepares a statement to the Council summarizing the expenses and the Council approves such expenditures.

2. Findings Regarding Control and Approval of City of Sun Valley Disbursements

Our review found that the intended process as described above was not complied with relating to certain expenditures, as follows:

- Adequate documentation and/or explanation of the reason for expenditures was not provided or presented by the department head in all cases, even though the department head signed their approval; for example, invoices and receipts were often times not provided for purchases made using a City-issued credit card, especially in the Fire Department.
- In some instances, the yellow sheet was not completed by the department head or the designated reviewing manager in the department, who was supposed to be the first sign-off approving the expenditure, but instead was prepared by the Finance Manager/Treasurer.
- The Finance Manager/Treasurer did not consistently, or in all situations, insist or follow up on expenditure requests that were not adequately documented. Additionally, the Finance Manager/Treasurer did not adequately or timely review and supervise the Fire Department payroll function to control and ensure that the on-call firefighters were accurately paid for actual hours worked and that the hours were properly documented.

Mr. Clay Gill
August 23, 2012

- The yellow sheet did not include, for some expenditures, the complete set of signatures of the department head or department manager, Finance Manager/Treasurer, City Administrator, Mayor, and the reviewing City Council member. For some expenditures, only one of the approval signatures was missing. In other instances, there were multiple missing signatures. The former City Administrator's husband claims that his wife's signature was forged onto some of the yellow sheets, which, if true, is another indication of failure to follow the review process. The multiple approval process was intended to provide control over the City's expenditures, however, the process and controls were not followed in all cases.
- For some periodic, reoccurring expenditures, prearranged automatic deductions were charged against the City of Sun Valley's credit cards or bank account before this approval process was complete.

B. Conclusion Regarding City of Sun Valley Disbursements

Based on our review of the documentation process for City of Sun Valley expenditures, the process in effect during the years 2009 through 2011 was not always followed, which resulted in inconsistent compliance with internal controls over expenditures. Additionally, during the course of the investigation we discovered that certain individuals responsible for reviewing and approving expenditures at the department level refused to sign off on the yellow sheets because they did not believe certain expenditures were appropriate or related to City of Sun Valley business. Notwithstanding, those expenditures were processed and approved for payment without sign-off by the department head or a department manager.

C. Recommendations Regarding Process for Approving City of Sun Valley Disbursements

The City should not allow payment for any expenditure prior to the completion of the review process. Thus, the City should suspend its practice of allowing its bank to pay off its credit card balance before the review process and suspend its practice of allowing some of its invoices to be automatically paid with the City credit card, unless the expenditures are preapproved by resolution of the Council. The City should provide for an alternative review process and allow some flexibility in its review policy to account for a situation where one of the reviewers is away from the office for an extended period of time.

II. Compensation of Employees

The City of Sun Valley Personnel Policies & Procedures Manual ("Personnel Manual") in effect during the years 2009 through 2011, as adopted by resolution of the Council, provides that the City Administrator is delegated with the authority to administer the policies set forth in the Personnel Manual and is responsible for periodically reviewing and recommending additions, deletions or amendments to the City's personnel policies to the Mayor and Council. See Sections 1.2 and 2.1 to the Personnel Manual. However, that grant of authority to the City Administrator is limited by other language in the Personnel Manual that states: "Amendments and revisions to the Manual shall be by resolution of the Mayor and the City Council and shall be approved prior to implementation."

Mr. Clay Gill
August 23, 2012

A. Lack of Controls Regarding City of Sun Valley Employee Work Schedules

1. Work Schedule, Attendance and Punctuality Policies

The Personnel Manual states that the normal work schedule is a 40-hour work week from 8:00 a.m. to 5:00 p.m.; however, the department heads, with City Administrator approval, retain the right to establish work schedules in order to best meet the needs of the City and the public. Employees are expected to be punctual and, if an employee regularly fails to arrive to work timely or leaves early, the employee will be subject to disciplinary action.

a. Findings regarding work schedules and attendance by salaried exempt employees

Our review and observations indicate that the City's stated normal work schedule was not consistently adhered to by some exempt employees. Department heads or supervisors were allowed to approve flexibility in work schedules. Additionally, there was a lack of consistent evidence of approval documentation of work schedule variances consistent with the Personnel Manual that allowed such variances, but only if they "meet the needs of the organization and the public." Rather, the work schedule variances appeared to have been taken by the exempt employees to accommodate their personal schedules by taking extended weekends and the like for out-of-town travel. In other instances, there appeared to be evidence justifying a variance in work schedules, such as after hour public meetings, city services dictated by emergency situations, and late night or early morning snow removal and road repairs, but these reasons were never documented as part of any formal process for allowing a variance in the effected employee's work schedule. Also, some employees worked from home rather than working at their City office.

We also found many instances in which exempt employees took compensatory time off during normal working hours (i.e., they were paid their normal salary even though they were out of the office and not claiming vacation during normal working hours), purportedly due to working more than 8 hours in a day or more than 40 hours in a work week. Many of these exempt employees who took compensatory time off claimed that they were working before or after regularly scheduled work hours and on weekends. In only one instance were we able to locate documentation authorizing compensatory time off for an exempt employee, which grant of compensatory time off is inconsistent with the Policy Manual that only authorized compensatory time off for non-exempt hourly employees (see Section 4.8.A.3). Further, a policy of compensatory time off for exempt employees who work more than 8 hours in a day or more than 40 hours a week is also inconsistent with other provisions of the Personnel Manual that state: "[i]t is anticipated that exempt Employees will work more than 2080 hours per year," that "Exempt Employees are expected to manage workloads to meet the high quality service needs of the City, including the supervision of staff, and may have variations in the hours worked from week to week to do so," and "Exempt Employees are not eligible for overtime compensation." We were also advised that the acting City Administrator and the acting Mayor orally approved flexible work schedules for some of the exempt employees. However, even if that was the case, those oral, unwritten policies were inconsistent with the above-quoted provisions of the Personnel Manual, which Personnel Manual states, at Section 1.2, that "Amendments and revisions to the Manual shall be by resolution of the Mayor and the City Council and shall be approved prior to implementation."

Mr. Clay Gill
August 23, 2012

Based upon the information we reviewed, we quantified the number of absences by exempt salaried employees during normal working hours without claiming vacation at 1,837 hours, with a value of \$88,161 based on the salaries paid to those exempt salaried employees.

b. Recommendations for Work Schedules and Attendance for Exempt Salaried Employees

In the early part of 2012, the City of Sun Valley implemented a leave policy that requires a City employee to notify his or her supervisor of any absence from the City during normal working hours. Further, we are advised that the City of Sun Valley is in the process of amending its Personnel Manual and including provisions that allow for various disciplinary actions to be taken against an exempt employee with unexcused absences. We would also recommend that the City, as a prudent practice of public accountability, document the reason for allowing any authorized variance in an exempt employee's work schedule, setting forth in writing the justification for the variance so as to comply with the City's Personnel Manual that only allows a variance in those instances that "meet the needs of the organization and the public."

B. Exempt Employees Being Paid Twice for Work Performed During Normal Working Hours

1. Findings

During the review period, certain City of Sun Valley salaried exempt employees also performed services for the City as on-call EMT firefighters. City of Sun Valley on-call EMT firefighters are paid for hours worked in response to emergency calls from the Blaine County emergency call center. We were told that exempt employees were not to be paid on an hourly basis for any EMT response that occurred during the City of Sun Valley's normal work hours, from 8:00 a.m. to 5:00 p.m., as those exempt employees were already paid a fixed salary for those hours. Our investigation, which included obtaining the exact time of EMT and fire calls from Blaine County, revealed that certain exempt employees were paid on an hourly basis for certain EMT and fire calls that occurred during normal work hours, which resulted in a double payment to those employees.

We quantified the number of double payments at 132 hours, or a total of \$2,243 in additional payments to those salaried, exempt employees.

2. Recommendations

Because exempt employees' primary responsibility is to complete their duties as described in their job descriptions as exempt employees during normal business hours, we would recommend that the City disallow the practice of allowing exempt employees to perform services as on-call EMT firefighters during normal working hours. This practice will not only prevent the issue of double payments to the exempt employees, but it will also help prevent issues related to ad-hoc variations in the work schedule of exempt employees. It is our understanding that this has been the practice of the City of Sun Valley since the early part of 2012.

Mr. Clay Gill
August 23, 2012

C. Exempt Employees Being Paid Salaries Inconsistent with the Personnel Manual

1. City Written Policies Regarding Administration of Salaries of City Employees

Section 4.6 of the Personnel Manual states: "The City's policy is to recognize and compensate Employees for work performed within and beyond the normal work period. Accordingly, the City will maintain a Salary Plan." Further, the Manual provides that a minimum and maximum salary is to be established for each job position in the City, excepting only the City Administrator and City Attorney positions. By resolution of the Council in February of 2007, the City adopted a salary plan for each job position in the City of Sun Valley, other than the City Administrator and City Attorney. That salary plan was based upon a study of salaries paid to individuals performing similar services to similar municipalities in comparable resort markets.

The Salary Plan adopted by resolution of the Council in February of 2007 set forth a minimum and maximum salary for each job position, and a nine step salary increase for each position. Further, the Personnel Manual provides that any changes in an employee's salary shall be consistent with the Salary Plan and based upon the results of periodic performance evaluations, which performance evaluations were to be conducted at least once a year. Any salary increase beyond the maximum salary set forth in the Salary Plan is only allowed when an employee reaches the final step nine of the salary plan and receives an excellent performance evaluation. Further, any pay increase beyond step nine is limited to an annual pay increase of 2.5%. Finally, the Personnel Manual states that the City Administrator was responsible for updating the Salary Plan in April of 2010, presumably to ensure that the salary ranges remained consistent with wages paid in comparable markets for employees performing similar duties.

2. Findings Regarding Administration of Salaries for Exempt Employees

During the review period, 2009-2011, the City did not follow the Salary Plan. Further, our investigation revealed that the City did away with employee performance reviews that were to be used in conjunction with the Salary Plan adopted by resolution of the Council. Rather than using the Salary Plan based upon annual performance reviews, the former Mayor and the former City Administrator used an ad-hoc subjective process for reviewing and adjusting salaries. This resulted in one instance of an employee being compensated more than \$15,061 above the maximum salary range established for that position under the Salary Plan approved by the Council. Further, our review discovered that that same City employee received two "merit" increases of \$5,000 within a four-month period, with no justification ever provided to us for the second "merit" increase. Presumably, these actions were taken by the then-acting City Administrator based upon language in the Personnel Manual that states: "The City Administrator reserves the right to change Employee salaries for any reason deemed appropriate including but not limited to job performance and the availability of City funds."

3. Recommendations for Administration of Salaries for Exempt Employees

The City apparently abandoned the Salary Plan that was based upon a market study of salaries in comparable resort markets for similar positions with similar duties for an ad-hoc subjective approach. This is not consistent with the concept of public accountability that should be the focus of any city administration. Additionally, if the City Administrator is allowed to deviate from the Salary Plan, his

Mr. Clay Gill
August 23, 2012

or her discretion should be limited to certain enumerated exceptions or subject to approval by the Council, which is by statute responsible for establishing and maintaining an adequate and reasonable system on internal accounting controls.

D. Wage and Hour Issues in the Fire Department

1. Findings regarding the hourly on-call EMT firefighters

The City's non-exempt hourly employees are paid for the compensable services they provide to the City and are eligible for overtime and compensatory time pursuant to applicable laws and as set forth in the Personnel Manual. Our findings found several issues relating to the compensation of on-call EMT firefighters who performed services for the City of Sun Valley.

During the review period, the City employed a number of on-call EMT firefighters. It was the expectation that these on-call EMT firefighters would be hired in a position that was intended as a second job and not a full-time position for the City of Sun Valley. To establish camaraderie amongst the firefighters, on-call EMT firefighters were encouraged to hang around the fire department, leading to some confusion as to what was and what was not compensable time as on-call EMT firefighter. For instance, we saw many firefighters requesting compensation for barbecues, and in other instances requesting compensation for seven hours for what appeared to be simple tasks such as cleaning the Fire Chief's office. We also discovered that even though the on-call position was intended as a part-time job, two on-call EMT firefighters were paid for more than 1,300 hours in a year, subjecting the City to liability to the State of Idaho administered retirement plan, PERSI.

During the review period, the recording of compensable time for the on-call EMT firefighters was handled in this fashion: the fire department maintained a white board to record the names of those on-call EMT firefighters who responded to a call. Those names were subsequently transferred to a log sheet that identified the name of the on-call EMT firefighter and the length of time they spent responding to the call. This log sheet also recorded time for drills and special events, such as attendance at any concerts held at the Sun Valley amphitheater (which appeared to be the bulk of hours recorded by the on-call EMT firefighters during the summer months). The maintenance of the log and the recording of the data on the log was the responsibility of the person who was supposed to submit monthly payroll summaries to the Finance Manager/Treasurer. The on-call EMT firefighters were responsible for recording any additional time, i.e., compensable time beyond the time recorded on the log, on a separate time sheet. Then, on a monthly basis, the hours recorded on the log and the time cards were added up and summarized on a single sheet of paper. The Fire Chief would then review the summary sheet and the supporting log sheet and time cards to ensure the accuracy of the hours reported on the single payroll summary sheet. Following the review process by the Fire Chief, the single-page summary sheets were submitted to the Finance Manager/Treasurer.

In 2010, the City adopted an unwritten oral policy that attempted to restrict the on-call EMT firefighters to 80 hours of compensable time each month. Based upon our review of e-mails and witness interviews, this 80-hour rule was implemented with the hope of limiting the City's liability for contributions to the State of Idaho administered retirement plan, PERSI.

Our review of the single-page payroll summary sheets, log sheets, and time cards for the on-call EMT firefighters revealed the following:

Mr. Clay Gill
August 23, 2012

- (1) Some on-call EMT firefighters consistently recorded more hours than others for attendance at the same event, such as an EMT class or a backcountry-training course;
- (2) Some entries on the time cards lacked dates, a description of the activity performed by the firefighter, were illegible, and in several instances we were not able to find time cards for some of the extra hours reported on the single-page summary sheets submitted to the Finance Manager/Treasurer;
- (3) Once the 80-hour rule was implemented, those overseeing the fire department payroll would consistently write down the on-call EMT firefighters' hours to something below 80 hours on the monthly single-page payroll summary submitted to the Treasurer when the log and time cards for extra hours for that on-call EMT firefighter totaled something more than 80 hours.
- (4) Our review of the payroll reports further establishes that the 80-hour rule was administered starting in September 2010 by never paying the on-call EMT firefighters more than 80 hours a month and attempts to make some of the on-call EMT firefighters whole by compensating them for their extra hours in later months when they reported less than 80 hours.
- (5) The time periods for the fire department payroll were not consistent and in some cases extended over a period of six weeks.
- (6) The review process for the fire department payroll included review of time cards by family members and, in some cases, the reporting of extra hours for family members for which we could not find a corresponding time card.
- (7) One on-call firefighter's records that allegedly supported his claim for extra hours was allegedly taken from the fire department as a result of an alleged break-in at the Elkhorn fire station in February of 2012.

2. Conclusions regarding wage and hour issues in the fire department

The log sheets and extra time cards used to calculate the compensable hours for the on-call E.M.T firefighters do not always accurately reflect the time identified on the single-sheet payroll reports prepared by the fire department and submitted to the Finance Manager/Treasurer. Further, the single-sheet payroll reports prepared by the fire department and submitted to the Finance Manager/Treasurer do not always match the payments identified on the City's electronic payroll reports that we reviewed. It is our opinion that those involved in payroll for the fire department attempted to comply with the unwritten 80-hour rule by writing off any time for an on-call EMT firefighter that exceeded 80 hours for that monthly payroll period, and attempted where possible to make that firefighter whole by paying them for the written-off hours in later months, when they reported something less than 80 hours.

3. Recommendations regarding wage and hour issues in the fire department

The City should clearly define what are compensable tasks by an on-call EMT firefighter. In 2012, the City prepared and distributed a written document that describes the duties of an on-call EMT firefighter. This should be supplemented with written instructions to the on-call EMT firefighters that explain what is and is not compensable time, as well as instructions on the detail to be provided in their time sheets to properly determine if the time they have recorded is compensable time. Family members should not be allowed to review and approve the hourly time sheets submitted by another family member. Wages should not be withheld or delayed to comply with any internal rule, such as the 80-hour rule. Our review reflected that there were twenty or more on-call EMT firefighters available at any given time, with some reporting only a few hours each month and others exceeding

Mr. Clay Gill
August 23, 2012

eighty hours. It would appear that the City could better manage the 80-hour rule by better distributing the work amongst the pool of available on-call EMT firefighters, informing the on-call firefighters that they are not authorized to work more than 80 hours each pay period, and disciplining any on-call EMT firefighter who reports more than 80 hours a month, after compensating that on-call representative for any compensable time they submitted for that pay period.

Our review indicates that in 2012 the City implemented new measures that define the fire department's payroll period in advance and ensure that the pay periods for the fire department are at least once a month.

E. Non-Compliance with the City's Accrued Vacation Hour Policies

1. Summary of the City's Vacation Policies During the Review Period (2009-2011)

The Personnel Manual provides employees with a number of days of vacation depending on years of service to the City.

The Personnel Manual further states that employees may accrue a maximum of 100 hours of vacation leave and the employee will cease accruing vacation leave until his/her accrual balance falls below 100 hours. Three employees, by agreement, were allowed to accrue up to 200 hours of vacation, with the provision that such employees will cease accruing vacation leave until his/her accrual balance falls below 200 hours.

Employees, with approval of the City Administrator, may convert up to 40 hours of vacation to a cash payment each year, provided that the employee has used an equal amount of vacation leave in the previous 12 months.

Vacation leave must be scheduled and approved in advance with the respective department head.

2. Findings Regarding the City's Vacation Policies During the Review Period

There were many violations of this section of the City policy during the review period:

- There was no formal system used to request and approve vacation leave.
- The City was not in compliance with the City's maximum vacation accrual policy during the years 2009 through 2011. A significant number of employees' vacation accrual hours were allowed to exceed the maximum allowed. The City did not properly cease accruing vacation hours when the accrual reached 100 hours or 200 hours, depending on the applicable employee.
- Some employees did not take or report the minimum of 80 hours per year, and the vacation policy variances were not properly documented as approved.
- Some employees reported vacation hours in excess of the number of hours allowed annually, and variances were not properly documented.
- Certain employees received cash payments for vacation hours despite not taking the required number of leave hours before qualifying for a "cash-out."

Mr. Clay Gill
August 23, 2012

- As discussed previously, some employees appeared to be out of the office on vacation without claiming vacation or otherwise reducing their accrued vacation balances.

3. Recommendations Regarding City's Vacation Policies

In the year 2012, the City implemented procedures for employees to document any leaves of absence, also requiring sign-off by the employee's supervisor. This should alleviate issues relating to unexplained absences and create a paper trail to accurately record vacation accrual balances, and properly justify cash-outs of vacation hours consistent with the City's written vacation policies. The City should also periodically review the accrued vacation balances of its employees to ensure that they are accurately stated and do not exceed the City maximum allowed thresholds.

We have been advised that as of July 1, 2012, all employees' accrued vacation balances were adjusted so as to comply with the 100 and 200 maximum allowable vacation accruals as applicable to the various City employees. Our review of the City's electronic payroll reports also confirms that this adjustment was made to each City employee's accrued vacation balance.

III. Improper Use of City Property

Section 3.13 of the Personnel Manual states, "City-owned vehicles shall never be used for private purposes" The Fire Chief is the only exception noted in the Personnel Manual, which states that the Fire Chief is provided a City-owned vehicle, which may be taken home and used during any work period for travel within and out of the City.

A. Findings Regarding Improper Use of City Property

Selected employees, in addition to the Fire Chief, were allowed, by approval of prior mayors, to use City-owned vehicles to commute from their residences to the City of Sun Valley offices, and to house the vehicles overnight at their respective residences. The Personnel Manual did not define an allowance for personal use of a City-owned vehicle. Some of these vehicles were allowed to be used for more than incidental personal use. In some cases, the City paid for fuel for the City-owned vehicles in excess of City business and incidental personal use.

Again, the Personnel Manual states, "Amendments or revisions to the Manual shall be by resolution of the Mayor and the City Council and shall be approved prior to implementation." Thus, any allowance of personal use of a City vehicle should have been documented by resolution of the Mayor and Council prior to the allowance of personal use of any City vehicle. Additionally, the City should issue the appropriate tax documentation, such as a 1099, to any employee receiving a fringe benefit such as personal use of a City-owned vehicle.

At the outset of our engagement, we were asked to investigate whether a 1999 pick-up, a white trailer, a Yamaha 125 motorcycle, and a red and green snowmobile were misappropriated from the City. Our investigation revealed no such misappropriation.

Mr. Clay Gill
August 23, 2012

B. Recommendations Regarding Accounting Controls for City Property

The City's accounting policies only require assets with a fair market value greater than \$5,000 to be recorded on the City's physical asset schedule. This threshold is very high and will exclude most assets of the City and, therefore, should be revisited and made consistent with the City's recent practice of creating an asset log in each department for any asset with a value exceeding \$250. Not having assets on an asset schedule makes it easier for assets to disappear unnoticed. Further, any City-owned assets that can be titled or registered should be titled and registered in the name of the City of Sun Valley to further ensure that those types of assets cannot be disposed of without proper City authorization.

IV. Issues Relating to Use of City of Sun Valley Issued Credit Cards

A. City Policies Regarding Credit Card Use

The City's written credit card policy and credit card user agreement provides that City-issued credit cards will only be used for City business travel, approved conferences and meetings, and payment of supplies under \$300. The purchases must be documented with receipts. The credit cards are not to be used for personal use.

B. Findings Regarding City Credit Card Usage

There was a severe lack of control with respect to credit card usage in the fire department. Credit card purchases were allowed in some instances without approval or documentation. Further, our investigation revealed instances of inappropriate credit card purchases because either they were unrelated to City business or they were excessive purchases in that the department was purchasing gear and equipment that was of greater quality than necessary to perform the tasks as an on-call EMT firefighter, or of greater quality than the standard gear issued to other on-call EMT firefighters. Examples include clothing, food, ski tickets, and electronic accessories. Many of these items that were purchased with the City credit card and determined to be unrelated to City business or excessive are also not in the possession of the City, further bolstering our finding that these purchases were unrelated to City business. Our investigation also uncovered instances where the credit card for the fire department was given to a family member with little to no control over the usage of the card and department members refusing to review and sign off on credit card statements because this department member believed that the charges itemized on the statement were for personal charges rather than City related business. Through the course of our investigation, we also learned that the issue relating to possible inappropriate charges within the fire department was brought to the attention of City administration in writing as early as February of 2010.

The City's credit card policy also requires each City of Sun Valley employee that is issued a City credit card to sign a Credit Card User Agreement. Upon our request, the City was only able to locate two signed City Credit Card User Agreements, although credit cards were issued to each department head.

Our investigation ultimately revealed \$23,494 in inappropriate charges on the credit card issued to the fire department.

Mr. Clay Gill
August 23, 2012

C. Recommendations Regarding City Credit Card Usage

The City's Credit Card Policy states that the City's Finance Manager/Treasurer is responsible for administration of the credit cards to ensure proper use. While this same concept is imposed upon the department heads that are issued credit cards through the Credit Card User Agreement to be signed by each department head, the City's policy should be amended such that department heads that are issued the credit card are also responsible for ensuring proper use of the credit card. Additionally, the City should ensure that each employee that issued a credit card signs a Credit Card User Agreement before the card is physically given to that employee. Finally, the fully-executed Credit Card User Agreements should be preserved in a secure location in the event they are needed as part of any enforcement process.

We have reviewed the City's revised procedures for approving charges on City credit cards that were implemented in 2012. We believe that the new procedures are adequate, but should also address the situation of a review by a family member, such that any charges on a City credit card by a department head's family member should be required to be pre-authorized by the City's Finance Manager/Treasurer or some independent person other than the department head who is a family member.

V. Review of City's Fuel Purchases

A. Summary of Investigation on Fuel Card Usage

We reviewed each department's fuel purchases for the years 2009 through 2011. We also reviewed the gallon usage in each department for the period January through June 2011, as compared to January through June 2012, after new procedures regarding fuel reports were put in place. The later study revealed that gallon usage was fairly consistent in every department but the police department and the fire department, with fuel usage increasing significantly in the police department and declining significantly in the fire department. Moreover, the later study revealed a decline in usage for one of the fuel cards assigned to one of the fire department's vehicles by more than 50%.

Based upon our initial findings, we conducted a more detailed review of the fire department's fuel usage. We learned that each vehicle in the fire department is assigned a fuel card. There are, however, some pieces of equipment that are not assigned their own fuel card, such as a snowmobile trailer, snowmobiles, and motorcycles used for backcountry rescue. In any event, we were told that some vehicles were fueled up with a fuel card assigned to another fire department vehicle. We additionally found that some fuel cards had multiple fuel-ups within a very short period of time; for example, one instance where there were 4 fuel-ups for 68 total gallons within an hour and a half of each other. We also learned that the fuel pump used by the fire department has the ability to track the user of the fuel card through the entry of an identification number, and the ability to track the odometer reading of the vehicle being fueled, although neither device at the fuel pump was ever used by the fire department during the review period.

We also learned that two individuals were tasked with reviewing the monthly fuel card statements for the various fuel cards assigned to the fire department vehicles. As mentioned previously, one of those reviewers refused to sign off on some yellow sheets because that person did not believe the fuel charges were related to City business. In any event, the unsigned yellow sheet with the fuel card statement attached was sent to the Finance Manager/Treasurer and ultimately approved for payment.

Mr. Clay Gill
August 23, 2012

B. Conclusions Regarding City Fuel Purchases

While we did not find anyone who witnessed someone in the fire department using a City fuel card for personal purchases, the other evidence of suspect fuel-ups within a short period of time on the one fuel card, coupled with an almost 50% decline in gallons purchased on that same card in 2012 as compared to 2011 after that fuel card was assigned to a different user, is highly suggestive of inappropriate fuel purchases on that City-issued fuel card.

C. Recommendations Regarding Fuel Card Policies

We have reviewed the City's new procedures governing fuel card purchases implemented in 2012, including requiring a fuel log in each vehicle and the use of the tracking devices at the fuel pump previously mentioned. We believe those new policies are thorough and comprehensive and should address the concerns relating to the findings set forth above.

VI. Reimbursement of Employee City Business Travel Expenses

A. City Policies on Reimbursement of Travel Expenses

The City's written policies during the review period provide that written applications, including cost estimates and preapproval from a supervisor, shall be completed before traveling outside of the county. The City Administrator will set maximum per diems for meals and the federal tax reimbursement for use of a personal vehicle for City business.

B. Findings Regarding City Policies on Reimbursement of Travel Expenses

We found no evidence of the policy being followed with respect to written applications and preapprovals for business travel expenses. We did find, however, that approval of travel related expenses was done after the fact in accordance with City policy.

C. Recommendations Regarding City Policies on Reimbursement of Travel Expenses

Subject to our comments and findings regarding control, supervision, review and approval of disbursements, in general, we believe that if the City adheres to policies regarding the process for review and approval of City travel expenses, the process is adequate.

VII. Inappropriate Business Dealings Between the City of Sun Valley and Relatives of City of Sun Valley Employees

We were initially tasked with looking into whether there were any inappropriate business dealings between the City of Sun Valley and any relatives of the City of Sun Valley's employees. We were only able to identify two vendors that had any relation to a City of Sun Valley employee. But there was no evidence of any inappropriate dealings, nor was there any evidence that the City of Sun Valley employee improperly influenced anyone to use their relative or otherwise participated in the process to hire that relative as a vendor to the City of Sun Valley.

Mr. Clay Gill
August 23, 2012

CONCLUDING REMARKS

The documents we reviewed and the witnesses interviewed as part of the forensic investigation are set forth below. Further, as indicated above, the more detailed findings of our investigation are set forth in the related Exhibits 1 to 18 and supporting Schedules.

INTERVIEW LIST

The following individuals were interviewed during the course of our investigation:

- Eric Adams
- Mayor Dewayne Briscoe
- Reid Black (by Clay Gill)
- Jeff Carnes
- Tina Carnes
- Cameron Daggett
- Virginia Egger
- Ray Franco
- Michelle Frostenson
- Mark Hofman
- Mal Prior
- Bill Whitesell
- Wayne Willich (including follow-up interview by Clay Gill)

In May of 2012, Sharon Hammer was invited to be interviewed, but declined the invitation at that time upon advice of her attorney.

SUMMARY OF DOCUMENTS REVIEWED

- General Documents
 - Organization chart
 - City of Sun Valley Personnel Policies and Procedure Manual
 - Resolutions relating to amendments to the Personnel Manual
 - Credit Card Policy
 - Salary plan
 - PERSI regulations
- Audited Financial Statements for the years ending September 2009 and 2010
- Department Operating Statements for the years ending September 2009 and 2010
- Department Specific Documents
 - Administration
 - General ledger detail for FY 2009-2011
 - Detailed payroll records
 - Building
 - General ledger detail for FY 2009-2011
 - Detailed payroll records

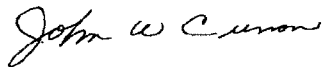
Mr. Clay Gill
August 23, 2012

- Community Development
 - General ledger detail for FY 2009-2011
 - Detailed payroll records
- Fire
 - General ledger detail for FY 2009-2011
 - Monthly payroll summary sheets
 - Monthly EMT/Drill Logs
 - Monthly time cards prepared by volunteers
 - Blaine County emergency response data
 - Fire hydrant testing reports
 - Detailed payroll records
- Police
 - General ledger detail for FY 2009-2011
 - Detailed payroll records
- Street
 - General ledger detail for FY 2009-2011
 - Detailed payroll records
- Payroll Documents
 - Payroll reports for all City of Sun Valley employees for 2009 – 2011
 - Leave Hour reports for all City of Sun Valley employees for 2009 – 2011
 - Time Cards for certain employees
 - Vacation Request Forms for certain employees
- Expenditure Records
 - Invoices/Receipts for FY 2009-2011
 - Credit Card Documents
 - Listing of all City credit cards and identity of City employee/representative to whom City credit card is issued
 - Documentation showing notice provided to individual employee(s) of proper use of City-issued credit card
 - Credit card statements
 - Credit card receipts or other documents showing itemizations supporting charges to card, dates of purchase, phone numbers, e-mail addresses, signature
 - Documents showing sign-off by superior, supervisor, or manager approving charges to credit card
 - "Yellow" sheets
 - Expense Reimbursements
 - Documents regarding City policies and procedures for claiming reimbursement of expenses from the City
 - Forms completed for expense reimbursement requests
 - Supporting documents for reimbursement requests
 - Hotel receipts
 - Restaurant receipts
 - Fuel receipts
 - Credit card receipts and statements

Mr. Clay Gill
August 23, 2012

- Check ledgers or registers showing payments made for expense reimbursements
 - Documents showing sign-off by superior, supervisor, or manager of any expense reimbursement request
- Accounting System
 - Access was granted to the Caselle accounting software system
- Various Correspondence
- Cell Phone Records
 - Cell phone billing records
- Budgets
 - City of Sun Valley budgets for FY 2009-2012
- Assets
 - Asset listings for City of Sun Valley owned assets
 - Depreciation schedule
 - City Policies and Procedures relating to use of City-owned property.
- Fuel Records
 - Fuel card purchase data
 - Vehicle maintenance records
 - United Oil fuel records and invoices

Yours truly,



John W. Curran

HAGEN STREIFF NEWTON & OSHIRO ACCOUNTANTS P.C.

JIM J. THOMAS
Prosecuting Attorney
TIMOTHY K. GRAVES
Chief Deputy
ANGELA S. NELSON
Deputy
MATTHEW E. FREDBACK
Deputy

STATE of IDAHO



KRAMER JUDICIAL BUILDING
201 2ND AVENUE SOUTH
SUITE 100
HAILEY, IDAHO 83333

TEL (208) 788-5545
FAX (208) 788-5554
EMAIL jthomas@co.blaine.id.us

BLAINE COUNTY PROSECUTING ATTORNEY

COPY

November 21, 2012

Mayor Dewayne Briscoe
Members of the Sun Valley City Council
Sun Valley City Hall
PO Box 416
81 Elkhorn Road
Sun Valley, ID 83353

RE: Criminal Investigation re: Employee Misconduct

Mayor Briscoe and Members of the Sun Valley City Council:

I. Scope of Investigation

In October of 2011, Sun Valley City Treasurer Michelle Frostenson complained to Sun Valley Mayor Wayne Willich that certain employees were misusing City property, committing fraud with City credit cards and failing to accurately document personal leave/vacation hours. Based upon Frostenson's complaints, the Sun Valley City Council notified Kirt Naylor of the Idaho Counties Risk Management Program (ICRMP) who in turn facilitated an ICRMP contract with Patricia Ball, Esq. of Management Northwest to conduct an investigation into Frostenson's complaints.

In December of 2011, my Office was requested by ICRMP attorney Kirtlan Naylor to initiate an investigation regarding allegations of employee misconduct, which included misuse of public funds, time card fraud, credit card abuse and illegal use of public

property. This request was initiated as a result of a conclusion by independent investigator Patricia Ball that “revealed suspected criminal activity”. Specifically, the request included allegations that former City Administrator Sharon Hammer misused a City vehicle and credit card, and failed to accurately account for personal leave/vacation hours. In addition, it was alleged that Fire Chief Jeff Carnes had possibly made unauthorized personal and excessive gasoline purchases using a City credit card, and had engaged in time card fraud involving his son, part-time firefighter/EMT Nick Carnes.

As the Prosecuting Attorney is generally precluded from conducting their own criminal investigations, I requested investigative assistance from the Idaho Attorney General’s Criminal Investigative Unit and Scott Birch, Criminal Investigative Unit Chief, opened a criminal investigation into the allegations in January of 2012. On February 9, 2012, Investigator Birch obtained three (3) bankers boxes of documents from Naylor that included credit card statements from the City of Sun Valley for October of 2010 through November 2011, payroll and time card records for the Sun Valley Fire Department for fiscal years 2009-2011, as well as a copy of Patricia Ball’s Investigation Report dated December 20, 2011. A review of this data necessitated additional documentation that was requested and/or subpoenaed from a number of sources including the City of Sun Valley, employee cell phone records, independent employment records, court affidavits, and sales receipts from various retailers from March of 2010 up to and including September of 2012. In addition to the referenced documents, an electronic copy of the HSNO Forensic Audit and supporting documentation was reviewed and heavily relied during the course of the investigation.

II. Standard for Filing Charges in Criminal Cases

In order to charge a person with a crime, my legal and ethical responsibility requires that there be probable cause supporting the charge. See State v. McGreevey, 17 Idaho 453, 463–64, 105 P. 1047, 1050 (1909); Idaho Const. Art. I, § 8; Idaho Code § 19–804; Idaho Crim. R. 5.1; IRCP 3.8(a). Probable cause results from information that would lead a person of ordinary care and prudence “to believe or entertain an honest and strong

suspicion that such person is guilty” of a particular crime. State v. Alger, 100 Idaho 675, 677, 603 P.2d 1009, 1011 (1979).

Having a strong enough suspicion to believe in a person’s guilt does not end the inquiry. In determining whether charges should be filed, a prosecutor must also determine whether there is a likelihood of conviction given the high standard of proof required in a criminal case. In criminal cases, the burden of proof placed upon the State is to prove its case beyond a reasonable doubt, which is a far more difficult burden of proof than the preponderance of the evidence standard used in civil cases. See State v. Sheahan, 139 Idaho 267, 273, 77 P.3d 956, 962 (2003) (explaining that the meaning of proof beyond a reasonable doubt requires “an abiding conviction, to a moral certainty, of the truth of the charge” in the eyes of a unanimous jury).

Analyzing the likelihood of conviction requires me to look at the strength of the evidence presented, as well as consider defenses and evidence likely to be raised by the accused. In the context of government employees, the most common of these defenses is that the employee was given permission, or was authorized, to engage in the particular act(s) of alleged misconduct. If tacit or explicit authorization was given, the employee may lack the requisite criminal intent, as they believed their actions were justified and permitted. See I.C. 18-2406(3) (providing for a defense to theft when the property is taken “open and avowedly, and under a claim of right made in good faith”).

In sum, I am compelled to review requests for criminal prosecution very critically. Besides the important legal and ethical considerations set forth above, I must also review the human and economic costs of prosecution, and the toll criminal prosecution takes on all involved. While I am responsible for seeing that those who violate the criminal laws in our community are brought to justice, I will not initiate criminal prosecution unless I am very confident that the charges are supported by compelling evidence and will ultimately be proven beyond a reasonable doubt at trial.

III. The Allegations against Sharon Hammer

a. Misuse of City Property

Hammer is alleged to have used a City vehicle for personal use, above and beyond her responsibilities as City Administrator, and is also alleged to have used a City credit card for gas purchases for the personal use of the vehicle.

There is a lack of hard evidence supporting criminal charges for these allegations. Although Hammer used the City vehicle for personal use, there is a lack of documentation to support criminal charges. As stated in the HSNO report,

Based on our review of the [Hammer fuel] charges, there is not adequate information to determine if the charges were for gasoline use in a City-owned or a personally-owned vehicle, nor can we determine how many miles the City-owned car was used for personal use and City business use. It does not appear that Ms. Hammer maintained documentation as to the type of City business attended to with the City-owned vehicle or the miles used for City or personal use.

The lack of evidence establishing these alleged crimes with specificity presents a serious hindrance to filing criminal charges and will ultimately hinder any attempt to prove charges beyond a reasonable doubt.

More compelling, however, is evidence establishing that the City permitted these activities. Despite the fact that use of a City vehicle for personal use is strictly prohibited by City of Sun Valley Policy 3.13, Mayor Wayne Willich expressly authorized Hammer to use the City vehicle for business and personal use, citing her standing as an on-call EMT in support of her need to use the vehicle on a full time basis. Willich also authorized Hammer to use the city credit card for fuel purchases associated with Hammer's use of the City vehicle. The credit card charges were then submitted and approved during the regular course of claims, which provides another layer of authorization from Hammer's supervisors.¹

¹ As noted throughout the HSNO report, standard procedures and protocols were routinely disregarded by City officials entrusted with the oversight of credit card and claim processing. This general willingness to disregard City policies and procedures is a recurring theme throughout this investigation.

Evidence and documentation supporting this alleged misuse of City property is either lacking or the activity had been approved by City officials. Accordingly, I cannot find that sufficient evidence exists to file and prove these allegations beyond a reasonable doubt.

b. Personal Leave

Hammer is alleged to have failed to account for personal leave she took while employed by the City. Specifically, the HSNO Report found 352 unexcused hours for which the City paid Hammer.

As was the case with the use of the City vehicle, Hammer's use of personal leave was consistent with the apparent approval of her supervisors. In this regard, Willich allowed Hammer to exercise a "flex time" schedule that did not require Hammer to account for her actual hours on the job. Although the Personnel Manual states that the normal work schedule is 8:00 a.m. to 5:00 p.m., Willich expected Hammer, as a senior executive, to work additional hours beyond her regularly scheduled work day and was authorized to take time off that corresponded with the extra hours she worked beyond the regular work day.² This lack of a structured schedule and flexible time accounting makes it highly likely that there are considerable hours of Hammer's work time that are unaccounted for, and these unaccounted hours could significantly decrease, or even erase, the 352 unexcused hour deficit set forth in the HSNO Report. Furthermore, there is no way of establishing an accurate accounting of hours worked without Hammer's own recollection, and thus, no way of independently establishing when Hammer was working or taking personal time off, which poses another significant problem in building a criminal case against her.

For the above stated reasons, there is insufficient evidence to establish that Hammer submitted false claims or committed theft for unaccounted personal leave, and I will not file criminal charges for this alleged misconduct.

² These extra hours included Hammer's attendance at evening meetings, work performed at home, and her status as a 24/7 EMT.

IV. The Allegations Against Jeff Carnes and the Fire Department

a. Fuel Charges

The Ball Investigative Report, HSNO Forensic Audit and the IAG Investigation uncovered inappropriate credit card charges on the City of Sun Valley Fire Department fuel credit card and account managed by Chief Carnes. The HSNO audit report found the volume of fuel usage on Carnes' credit card was not consistent with the usage needed for only City vehicles, and that these excess fuel charges suggested that there was fuel usage for personal vehicles as well.

Once again, there is a complete lack of evidence establishing that particular fuel charges were used for personal use. This is primarily due to what the HSNO Report refers to as "a lack of control" over fuel card supervision and protocols within the Fire Department, City Finance Manager/Treasurer, City Administrator, Mayor, and rotating Council member.³ Specifically, City records are missing the following critical information: (1) the vehicles or equipment being fueled; (2) odometer readings; (3) name of the purchaser; and (4) explanations tying the fuel purchase to a legitimate use of City equipment. Although each vehicle was issued its own fuel card, different cards were used for different vehicles, with different fuel types, by different individuals.

In addition, interviews with past and present employees suggest several plausible explanations for what looked like excessive use of these cards. For example, one explanation was that Chief Carnes would use his credit card to fill up all of the vehicles after a single incident. This would account for an excessive charge, for different fuel types, on Carnes' credit card, but would likely constitute legitimate fuel expenditures. Without sufficient documentation, each of these explanations, true or not, could suffice to establish reasonable doubt in the minds of jurors. Given the lack of documented proof of illegitimate fuel purchases, lack of administrative oversight, and the fact that multiple people had access to the fire department fuel account, it cannot be proven beyond a reasonable doubt that criminal conduct occurred in relation to the fuel purchases.

³ Hammer was notified of possible fuel card abuses in February, 2010, but did not take any action to investigate or institute administrative controls to curb possible misconduct.

b. Other Credit Card Purchases

The next allegation of misconduct on the part of Chief Carnes involves the misuse of the Sun Valley credit card for certain purchases. These inappropriate purchases include items that were alleged to have been purchased for personal use, such as custom clothing, electronic equipment, food, ski tickets, and snowmobile repairs. In addition, the HSNO Report determined that there was a general lack of control over the manner in which the City credit card was used, including inappropriate coding of purchases, lack of documentation of purchases, use of the credit card by someone other than the person the card was issued to, payment of sales tax, and lack of permission/authorization for purchases.

As discussed previously, there was a general lack of institutional controls over the manner in which the Fire Department credit card was used, and this included the manner in which purchases were approved by others within City government. These lax controls were present in all or most levels of City government and present an enormous challenge to any criminal prosecution due to the lack of accurate documentation establishing specific instances of misconduct. In fact, the submission of these claims and the subsequent assent and approval of these purchases by the Administrator⁴, Mayor, Finance Officer, and revolving Council member create a presumption that these purchases were authorized as valid expenditures. In the eyes of a criminal jury, the fact that City policy was not followed is largely immaterial in light of this authorization, since the failure to follow policies and procedures was widely accepted.

Moreover, the alleged purchases were arguably made for legitimate City uses. For example, investigative interviews of Chief Carnes and Willich revealed that many of the excessive and unwarranted credit card purchases were arguably pre-authorized based upon undocumented discussions between Willich and Carnes, and an understanding that the City would provide certain gear, clothing and equipment to Chief Carnes and other employees of the fire department. Although some may quarrel with whether there was a legitimate need for such items, or their exorbitant price tags, such matters do not raise issues of

⁴ Hammer was also notified of credit card abuses in February, 2010, but she did not take any action to investigate or institute administrative controls at that time.

criminal culpability. Since the expenditures were authorized, they cannot be considered theft, and cannot be proven beyond a reasonable doubt.

c. Time Card Fraud

The final allegation concerns purported time card fraud in the Sun Valley Fire Department. The specific allegation being that Nick Carnes, son of Chief Carnes was paid for hours that he did not legitimately work. Specifically, the HSNO Report raises issues concerning missing documentation for Nick Carnes and others⁵, illegible time cards for Nick Carnes that were prepared by his mother, Tina Carnes, vague descriptions of work performed, and large discrepancies between Nick Carnes' hours in comparison with similar employees.

Again, there is a lack of specific instances proving that Nick Carnes was not working at times when he was paid by the City. The sheer number of hours worked certainly raises suspicion, and although there are numerous hours of undocumented or improperly documented payments to Nick Carnes, it is impossible to reconstruct an accurate timeline or find supporting evidence that the State can rely upon to prove criminal malfeasance. Most notably, there is nothing establishing that Nick Carnes did not work the hours he was paid for, and there are several levels of administrative approval for these hours worked and the corresponding payments to Nick Carnes. As with the other allegations, there was a profound lack of management oversight and lax record keeping that heavily contributed to this situation and greatly hinders criminal prosecution.⁶ Taken together, these factors prevent the time card fraud allegations from being proven beyond a reasonable doubt.

⁵ The HSNO Report noted that time cards were missing for Sharon Hammer, Nick Carnes, and Tina Carnes.

⁶ Most shocking is the lack of any administrative control to curb the appearance of impropriety created by and the familial relationship between Jeff, Tina, and Nick Carnes. Instead of developing a system of oversight that would eliminate any appearance of nepotism, Nick was allowed to report his hours to his mother, who then created time cards for his father's approval and submission. At a minimum, such a close relationship begs for close scrutiny and oversight from the Mayor and Administrator. That apparently did not occur here.

V. Conclusion

I will not be filing criminal charges against past or present Sun Valley City employees for the allegations discussed in this letter. Although no criminal charges will be forthcoming, the investigations revealed serious failures at multiple levels of management and supervision within the City of Sun Valley, including (1) a failure to document; (2) a failure to follow stated policies and procedures; (3) lax management and oversight; (4) poor time accounting; (5) apparent conflicts of interest; and (6) a lack of checks and balances throughout the claims process. These failures in oversight contributed to a culture of entitlement where certain employees took advantage of the City's mismanagement, and led to a breach of the public trust and damage to the City's professional reputation. I trust that the City of Sun Valley will institute the necessary actions to make sure that the mistakes of the past are not repeated in the future.

Very truly yours,



Jim J. Thomas
Blaine County Prosecuting Attorney

cc: Kirt Naylor, ICRMP
Paul Panther, Chief Idaho Attorney General Criminal Division

PRESS RELEASE

FROM: Mayor Dewayne Briscoe, City of Sun Valley
DATE: June 11, 2012
Re: Sun Valley's City Clerk Tort Claim Notice Settled

On April 20, 2012, City Clerk Kelly Ek filed a tort claim notice alleging that, "Ms. Hammer (City Administrator) and Mayor Willich retaliated against Ms. Ek both directly by their offensive behaviors as well as disparaging her to fellow employees." Ms. Ek's tort claim notice cited a violation of Idaho's "Whistle Blower" statute and other federal and state protections.

The tort claim notice included that "Ms. Hammer and Mayor Willich, in an effort to discredit Ms. Ek's position, influenced Ms. Ek's co-workers to criticize, shun, disrespect, and reject Ms. Ek's effort in carrying out her responsibilities as City Clerk." The tort claims the "malicious and unfounded retaliation" was a result of Ms. Ek bringing matters to the attention of the City Council concerning Ms. Hammer's administration, which "violated her position of authority as Sun Valley City Administrator."

The City of Sun Valley's liability insurance carrier Idaho Counties Risk Management Program (ICRMP) provided coverage for the tort claim notice. The Mayor and City Council were not parties to the negotiation and had no role in the settlement.

ICRMP has reported to the City that it has resolved all claims relating to this tort claim notice. ICRMP will pay Ms. Ek \$65,000, plus \$7,000 for attorney's fees to resolve the matter. Ms. Ek tendered her resignation, effective June 8, 2012, which Mayor Briscoe has accepted.

Mayor Briscoe, informed of the resolution, stated:

This is another step in resolving the difficult issues, which were brought to City Council and me just after the November 5th election. It is my responsibility with City Council to guarantee to our citizens that all City officials and employees consistently meet the highest standard of integrity and comply with federal and Idaho state laws. We will continue in this endeavor as ongoing issues are resolved in the months ahead.



PRESS RELEASE

FINANCE MANAGER/TREASURER'S DRAFT TORT CLAIM NOTICE SETTLED

On June 27, 2012, the City of Sun Valley's insurer, Idaho Counties Risk Management Program (ICRMP), reported to Mayor Dewayne Briscoe and City Council that it has settled any potential claim against the City of Sun Valley and its officials in response to a draft tort claim notice ("Notice"), which was submitted to ICRMP counsel from the attorney for City Finance Manager/Treasurer Michelle Frostenson. After full consideration of the matter, ICRMP settled the potential claim for a payment to Treasurer Frostenson of \$84,127, of which \$13,519 was for attorneys' fees and costs. As in the recent settlement of City Clerk Kelly Ek's tort claim notice, neither the Mayor nor the City Council were involved in the negotiations or ICRMP settlement with Treasurer Frostenson.

The basis of the draft Notice was the violation of the protections afforded in the State of Idaho's "Whistleblower" laws. Treasurer Frostenson's draft Notice states, "During the course of Mrs. Frostenson's employment with the City of Sun Valley, it became known to Mrs. Frostenson that Ms. Hammer and other employees of the City had abused their respective positions and had thereby misappropriated City assets in various ways, which include, but are not limited to, the following: a) Misappropriating funds of the City; b) Use of the City's motor vehicle and other City assets for personal benefit; c) Use of City-issued credit cards for personal benefit, other than City business; d) Misrepresentation of paid time off; e) Approval of fraudulent timecards of certain "special employees," thereby allowing these "special employees" to receive benefits(s) to which they were otherwise not entitled; f) Creation of a hostile work environment by misusing positions of authority; g) Failure to comply with the anti-nepotism statutes, ordinances and/or rules which were in effect and were to be abided by individuals employed by the City."

The draft Notice continues, "Mrs. Frostenson communicated in good faith the suspected illegal conduct and waste to Mayor Willich on or about October 5, 2011, and to the City Council on or about November 11, 2011. Following the communication, Mayor Willich forwarded a certain Notice of Advice Regarding Investigation to Mrs. Frostenson, which provided that 'should you believe that any action or conduct by co-workers or supervisors is in any way intimidating or retaliatory to you as a result of your involvement with any employment investigation you are to notify your supervisor or the City's outside counsel.....'

Notwithstanding, on or about December 28, 2011, and at various times thereafter, the City, its Council and specifically Ms. Hammer and Mayor Willich himself retaliated against Mrs. Frostenson by placing her on unpaid leave, by subjecting Mrs. Frostenson to offensive behavior and words, and by disparaging Mrs. Frostenson to fellow employees."

Mayor Dewayne Briscoe informed of the settlement of this claim stated: "Many difficult issues have arisen before the City since the November election. The settlement of this claim, now following settlement of the City Clerk's claim earlier this month, allows the City to move forward. None of these outcomes are easy. The next key step will be the completion of the City wide forensic audit. With City Council, I will continue to work vigorously to address and to resolve all matters, so the citizens of Sun Valley can trust that its officials and employees are engaged in the day-to-day business of good government."

Sun Valley City and City officials deny any wrongdoing that is alleged in the draft Notice.

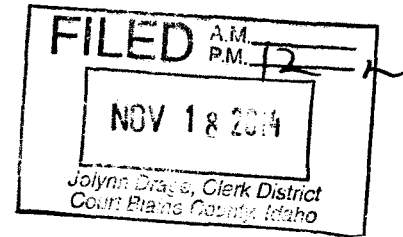
Mrs. Frostenson has tendered her resignation, which Mayor Briscoe has accepted. During the transition period to find and train a successor, Mrs. Frostenson will provide payroll and payable services, and assist with other duties required of the Finance Manager for the City, as an independent contractor.

The complete draft Tort Claim Notice is available on the City of Sun Valley's website at www.svidaho.org.

Press Release approved for publication and posting by Mayor Dewayne Briscoe, June 27, 2012.

Eric B. Swartz, ISB #6396
Joy M. Vega, ISB #7887
JONES & SWARTZ PLLC
1673 W. Shoreline Drive, Suite 200 [83702]
P.O. Box 7808
Boise, ID 83707-7808
Telephone: (208) 489-8989
Facsimile: (208) 489-8988
Email: eric@jonesandswartzlaw.com
joy@jonesandswartzlaw.com

Attorneys for Plaintiff Sharon R. Hammer



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

COMES NOW Plaintiff Sharon R. Hammer ("Plaintiff"), by and through her counsel of record, Jones & Swartz PLLC, and pursuant to Idaho Rules of Civil Procedure 7(b) and 56, hereby requests that the Court enter judgment as a matter of law dismissing Defendant City of Sun Valley's Fifth and Sixth Affirmative Defenses that Plaintiff's claims arising from her rights and protections under the Idaho Protection of Public Employees Act are barred by waiver and release.

This Motion is made and supported by the pleadings and filings of record before the Court as well as the Memorandum, Affidavit of Counsel, Affidavit of Sharon R. Hammer,

Affidavit of James R. Donoval, and Affidavit of Wayne Willich in Support of Plaintiff's Motion for Summary Judgment, each filed contemporaneously herewith.

DATED this 17th day of November, 2014.

JONES & SWARTZ PLLC

By 
ERIC B. SWARTZ
JOY M. VEGA

CERTIFICATE OF SERVICE

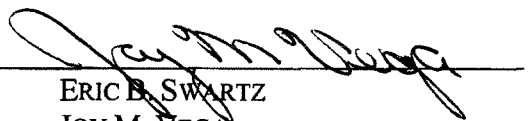
I HEREBY CERTIFY that on this 17th day of November, 2014, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan G. Naylor
NAYLOR & HALES, P.C.
950 W. Bannock Street, Suite 610
Boise, ID 83702-6103

☒ U.S. Mail
☐ Fax: 383-9516
☐ Hand Delivery
☐ Email: kirt@naylorhales.com

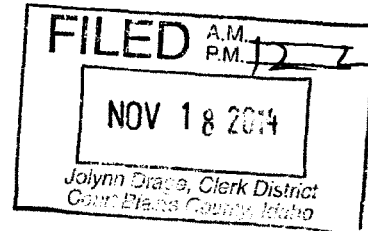
The Honorable Jonathan P. Brody
District Judge
Minidoka County Courthouse
8th & G Streets
P.O. Box 368
Rupert, ID 83350

☒ U.S. Mail
☐ Fax: (208) 436-5272
☐ Overnight Delivery
☐ Hand Delivery
☐ Email:


ERIC B. SWARTZ
JOY M. VEGA

Eric B. Swartz, ISB #6396
Joy M. Vega, ISB #7887
JONES & SWARTZ PLLC
1673 W. Shoreline Drive, Suite 200 [83702]
P.O. Box 7808
Boise, ID 83707-7808
Telephone: (208) 489-8989
Facsimile: (208) 489-8988
Email: eric@jonesandswartzlaw.com
joy@jonesandswartzlaw.com

Attorneys for Plaintiff Sharon R. Hammer



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

I. INTRODUCTION

Plaintiff Sharon R. Hammer requests that the Court enter summary judgment dismissing Defendant City of Sun Valley's ("City" or "Sun Valley") Fifth and Sixth Affirmative Defenses that assert Ms. Hammer has waived or released her claims, rights and protections afforded under the Idaho Protection of Public Employees Act, I.C. §§ 6-2101, *et seq.* ("IPPEA"). Sun Valley's affirmative defenses are based on a statement of waiver and release signed by Ms. Hammer after her employment with Sun Valley was terminated. Sun Valley purportedly terminated Ms. Hammer "without cause" pursuant to Section 3.A. of her written employment contract.

Section 3.A. also contained an exculpatory clause that conditioned Ms. Hammer's receipt of severance pay on her signing a statement of waiver and release of claims arising from her termination without cause.

Sun Valley now relies on that statement of release in its attempt avoid liability under the IPPEA. But, Ms. Hammer could not and did not waive or release any statutory right or protection created by the IPPEA. As a matter of express public policy, the Court should dismiss Sun Valley's affirmative defenses and grant Ms. Hammer's Motion for Summary Judgment.

II. STATEMENT OF UNDISPUTED MATERIAL FACTS

1. On June 1, 2008, Ms. Hammer began her employment with Sun Valley as its City Administrator.¹ The terms of her employment were set forth in the City Administrator Employment Agreement ("Employment Agreement").² The City of Sun Valley Personnel Policies & Procedures Manual was incorporated into the terms of the Employment Agreement.³

2. On September 17, 2009, Ms. Hammer's Employment Agreement was extended through the written City Administrator Employment Agreement Extension to automatically renew on June 1st of each year "unless notice that the Agreement shall terminate is given at least sixty (60) days before the expiration date."⁴

3. On December 28 and 29, 2011, then-Sun Valley Mayor Wayne Willich confirmed in writing that Ms. Hammer's Employment Agreement was valid through June 22, 2012.⁵

¹ AFFIDAVIT OF SHARON R. HAMMER IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ("Aff. of Hammer"), filed contemporaneously herewith, ¶¶ 3-4, 12, Ex. 1; AFFIDAVIT OF WAYNE WILlich IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ("Aff. of Willich"), filed contemporaneously herewith, ¶ 3.

² Aff. of Hammer, ¶ 4, Ex. 1; Aff. of Willich, ¶¶ 3, 5.

³ Aff. of Hammer, Ex. 1.

⁴ AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ("Aff. of Counsel"), filed contemporaneously herewith, Ex. 1.

⁵ Aff. of Counsel, Ex. 2.

4. Beginning in or about October 2009 through September 2011, Ms. Hammer made multiple complaints to Mayor Willich and City Attorney Adam King regarding City Councilman Nils Ribi's acts of harassment, hostility and misconduct against her.⁶ Mayor Willich repeatedly spoke with Mr. Ribi regarding Ms. Hammer's complaints.⁷ Mr. Ribi admits he had knowledge of Ms. Hammer's complaints against him by at least November 11, 2011.⁸

5. On October 5, 2011, City Treasurer Michelle Frostenson approached Mayor Willich with concerns that, among other alleged problems, there had been improper vacation accruals totaling approximately \$133,000.⁹ Mayor Willich, with the assistance of Sun Valley bookkeeper Tami Hall, determined that Ms. Frostenson's allegations lacked veracity.¹⁰

6. Beginning on or about November 10, 2011, Ms. Frostenson and City Clerk Kelly Ek began communicating with Mr. Ribi and Mr. King regarding allegations of misconduct against Ms. Hammer and materials that purportedly supported their allegations.¹¹

7. On November 10, 2011, Mr. Ribi, then-Council President DeWayne Briscoe, and Councilman Robert Youngman called a Special Meeting of the City Council to be held on November 11, 2011.¹² In addition to the three Councilmen, Mayor Willich, Mr. King, and Ms. Frostenson were present.¹³ At the Executive Session, Ms. Frostenson presented the same allegations she had presented to Mayor Willich on October 5, 2011.¹⁴

⁶ Aff. of Hammer, ¶¶ 13, 17; Aff. of Willich, ¶¶ 11-12; Aff. of Counsel, Ex. 24, Willich Dep. 32:4-11, 32:22-34:11, 34:18-35:9, 133:16-136:3, 136:12-137:20.

⁷ Aff. of Counsel, Ex. 24, Willich Dep. 32:12-21, 36:2-25, 139:8-140:2; Aff. of Hammer, ¶ 13.

⁸ Aff. of Counsel, Ex. 26, Ribi Dep. 12:2-6.

⁹ Aff. of Counsel, Ex. 24, Willich Dep. 11:14-12:25.

¹⁰ Aff. of Counsel, Exs. 23, 24, Willich Dep. 16:7-17:15, 20:24-21:12; *see* Aff. of Counsel, Ex. 27, Youngman Dep. 37:13-38:6.

¹¹ Aff. of Counsel, Exs. 4-6.

¹² Aff. of Counsel, Ex. 7; Aff. of Hammer, ¶ 14.

¹³ Aff. of Counsel, Ex. 24, Willich Dep. 24:15-25; Aff. of Hammer, ¶ 14.

¹⁴ Aff. of Counsel, Ex. 24, Willich Dep. 25:1-2, 25:23-29:23; Aff. of Counsel, Ex. 27, Youngman Dep. 33:12-35:4; Aff. of Hammer, ¶ 14.

8. After the November 11, 2011 Special Council Meeting, Councilmen Ribí, Briscoe, and Youngman each demanded Ms. Hammer's resignation from her position.¹⁵ Ms. Hammer refused to resign.¹⁶

9. As early as the November 11, 2011 Special Council Meeting, Mr. Ribí was asserting that there could be criminal charges made against Ms. Hammer.¹⁷

10. On November 14, 2011, another Special Council Meeting was held. At that meeting Mayor Willich and the City Council decided to hire an independent person to look into the allegations brought by Ms. Frostenson against Ms. Hammer.¹⁸ At a later meeting, and against Mr. Ribí's vote, the City Council also instructed that an investigation be conducted into Ms. Hammer's complaints of harassment against Mr. Ribí.¹⁹

11. On November 18, 2011, Mayor Willich provided Ms. Hammer with written notice that she was being put on paid administrative leave.²⁰ He told Ms. Hammer that she was placed on administrative leave to protect her from Mr. Ribí, not because she had done anything wrong.²¹

12. On November 21, 2011, Ms. Hammer filed her VERIFIED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF PURSUANT TO THE IDAHO PROTECTION OF PUBLIC EMPLOYEES ACT and her EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER PURSUANT TO THE IDAHO PROTECTION OF PUBLIC EMPLOYEES ACT in the Blaine County District Court, Case No. CV-2011-928 ("2011 IPPEA Case"). The 2011 IPPEA Case named as defendants Nils Ribí, the

¹⁵ Aff. of S. Hammer, ¶ 14; Aff. of Counsel, Ex. 24, Willich Dep. 27:4-10, 29:7-23; Aff. of Counsel, Ex. 29, Lamb Dep. 14:8-17:7.

¹⁶ Aff. of S. Hammer, ¶ 14.

¹⁷ Aff. of Counsel, Ex. 24, Willich Dep. 30:4-31:9.

¹⁸ Aff. of Counsel, Ex. 27, Youngman Dep. 42:10-43:5, 44:6-45:11; Aff. of Counsel, Ex. 26, Ribí Dep. 59:24-62:5; Aff. of Counsel, Ex. 29, Lamb Dep. 26:13-27:20, 30:1-32:2.

¹⁹ Aff. of Counsel, Ex. 26, Ribí Dep. 156:3-8; Aff. of Counsel, Ex. 27, Youngman Dep. 42:10-43:5, 44:8-45:11.

²⁰ Aff. of Counsel, Ex. 8.

²¹ Aff. of Counsel, Ex. 9; Aff. of Counsel, Ex. 24, Willich Dep. 76:5-77:24.

City of Sun Valley, and Adam King. Kirtlan Naylor was hired and appeared as legal counsel for Sun Valley and Mr. King.²² Mr. Naylor also associated as counsel of record for Mr. Ribí, individually.

13. On November 30, 2011, the Idaho Mountain Express newspaper reported that: “An internal investigation of Sun Valley City Administrator Sharon Hammer’s ‘possible misuse of public funds and equipment’ was the cause of her being placed on administrative leave two weeks ago.”²³ The article quoted the AFFIDAVIT OF MR. RIBI IN OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER that he had filed in the 2011 IPPEA Case.²⁴ The article also quoted Mr. Ribí’s Affidavit as averring that: “[T]he Mayor and Council had reason to believe that the Plaintiff may have committed serious misconduct, including possible criminal violations of statutes dealing with the misuse of public funds and falsification of public records.”²⁵

14. Mr. Ribí was not authorized by the Sun Valley City Council to disclose to the public what took place in Executive Sessions.²⁶

15. On December 5, 2011, Ms. Hammer amended her Complaint in the 2011 IPPEA Case to add Mr. Youngman as a defendant.

16. On December 15, 2011, Ms. Hammer served on Sun Valley a notice of tort claim against Sun Valley, Mr. Ribí, Mr. Youngman, Mr. King, and Ms. Frostenson. On December 28, 2011, Ms. Hammer served a revised notice of tort claim on Sun Valley, adding Mr. Naylor; Patricia Latham Ball, supposed independent investigator hired by Sun Valley to conduct the

²² Mr. Naylor was only retained to represent Sun Valley in the IPPEA Case, not to participate in Ms. Ball’s investigation. Aff. of Counsel, Ex. 24, Willich Dep. 52:23–53:19.

²³ Aff. of Counsel, Ex. 10.

²⁴ Aff. of Counsel, Ex. 26, Ribí Dep. 114:2–144:13.

²⁵ Aff. of Counsel, Exs. 10 and 11.

²⁶ Aff. of Counsel, Ex. 27, Youngman Dep. 79:8–15, 80:1–11; Aff. of Counsel, Ex. 29, Lamb Dep. 53:3–55:1; Aff. of Counsel, Ex. 26, Ribí Dep., 116:5–13, 119:19–123:13.

investigations; and now Mayor-Elect Briscoe as potential defendants.²⁷

17. On or about December 16, 2011, Ms. Hammer filed a charge of discrimination against Sun Valley and Mr. Ribí with the Idaho Human Rights Commission.²⁸

18. On December 23, 2011, Mayor Willich requested that Ms. Hammer return from administrative leave on December 27, 2011, and assume her normal duties as City Administrator and paid on-call firefighter/EMT.²⁹

19. On December 29, 2011, Mayor Willich advised Ms. Hammer that he considered Ms. Ball's investigation into the allegations of misconduct against Ms. Hammer to be closed – having been inconclusive of any finding of misconduct.³⁰

20. On January 3, 2012, DeWayne Briscoe was sworn in as Sun Valley Mayor. The 2011 IPPEA Case was still pending with the Blaine County District Court when Mr. Briscoe became Mayor of Sun Valley.

21. On January 4, 2012, Mayor Briscoe provided Ms. Hammer with written Notice of Paid Administrative Leave Pending Investigation.³¹ The Notice directed that: **“This is a confidential personnel matter at this point, and you should respect that confidentiality until our inquiry is complete and you have been able to respond to our initial determinations.”**³²

22. Yet, two days later, on January 6, 2012, a statement by Mayor Briscoe was published by the Idaho Mountain Express newspaper that: “Sun Valley City Administrator Sharon Hammer was placed back on paid administrative leave Thursday.”³³

²⁷ Aff. of Counsel, Ex. 12.

²⁸ Aff. of Counsel, Ex. 13.

²⁹ Aff. of Counsel, Ex. 14; Aff. of Counsel, Ex. 29, Lamb Dep. 58:2-16.

³⁰ Aff. of Counsel, Ex. 15.

³¹ Aff. of Counsel, Ex. 16.

³² Aff. of Counsel, Ex. 16, Bates No. HAMMER 000247 (emphasis original).

³³ Aff. of Counsel, Ex. 18 (emphasis original).

23. And, five days later, on January 9, 2012, Mayor Briscoe filed the AFFIDAVIT OF DEWAYNE BRISCOE in the 2011 IPPEA Case stating purported reasons why he placed Ms. Hammer back on administrative leave on January 4, 2012.³⁴

24. The January 4, 2012 Notice also stated that: **“In the event the investigation indicates personnel action is warranted for your conduct or for cause, you will be given an opportunity to present any response to the information received as a result of the on-going investigation before a final decision is made regarding the action to be taken.”**³⁵

25. Ms. Hammer never received evidence of or explanation regarding the allegations against her, or an opportunity to respond to the allegations or any “initial determinations” that may have been made.³⁶

26. Also on January 4, 2012, Mayor Briscoe provided Ms. Hammer with a Notice of Administrative Investigation; Order to Participate in Interview Process and Advice of Rights.³⁷

27. On January 16, 2012, Sun Valley issued a disparaging press release, which was also advertised in the Idaho Mountain Express, regarding Ms. Hammer’s voluntary dismissal of the 2011 IPPEA Case.³⁸ In the press release, Sun Valley stated, in part: “[T]he City’s investigative report ... has been turned over to the Blaine County Prosecuting Attorney for an independent review of possible criminal conduct.”³⁹

28. On January 19, 2012, during a regular Sun Valley City Council meeting, Mayor Briscoe asked for a motion on the issue of Ms. Hammer’s termination, and Councilman Franz

³⁴ Aff. of Counsel, Ex. 19.

³⁵ Aff. of Counsel, Ex. 16, Bates No. HAMMER 000248 (emphasis original).

³⁶ Aff. of Counsel, Ex. 25, Briscoe Dep. 158:15–165:24.

³⁷ Aff. of Counsel, Ex. 17.

³⁸ Aff. of Counsel, Ex. 20.

³⁹ Aff. of Counsel, Ex. 20.

Suhadolnik made the motion.⁴⁰ Councilman Suhadolnik's reasoning for making the motion was that Councilmembers Ribi and Youngman were likely "tainted" because Ms. Hammer had brought complaints and legal actions against them.⁴¹

29. Before Ms. Hammer's termination on January 19, 2012, Sun Valley had ordered and was planning to publish a colored advertisement with the Idaho Mountain Express newspaper announcing Ms. Hammer's immediate termination.⁴²

30. Pursuant to Section 3 of the Employment Agreement, purportedly terminating Ms. Hammer without cause required the City to make a severance payment to Ms. Hammer, under the following specific terms:

SECTION 3. TERMINATION AND SEVERANCE PAY

A. Employer, acting through the Mayor, may terminate Employee's employment, **without cause**, for any reason or no reason. Any such decision to terminate shall occur only after the Mayor consults with each member of the City Council. Upon such termination, Employer shall pay Employee, as severance pay, a lump sum cash payment equal to six (6) months, base salary described in Section 5, Subsection A.

The severance payment herein is intended to be Employee's **sole exclusive remedy** for any and all claims for damages of any kind arising from a termination **without cause** and such severance payment is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement. Accordingly, Employee waives her right to bring a claim of any kind for damages against Employer arising from a termination **without cause**. Consequently, receipt of the severance payment is subject to execution of a release of all claims against the City of Sun Valley. A termination **without cause** shall not entitle Employee to an informal review under any section of the City of Sun Valley Personnel manual ("Personnel Manual").⁴³

⁴⁰ Aff. of S. Hammer, ¶ 15; Aff. of Counsel, Ex. 28, Suhadolnik Dep. 55:19-58:11; Aff. of Counsel, Ex. 25, Briscoe Dep. 152:20-153:5.

⁴¹ Aff. of Counsel, Ex. 29, Suhadolnik Dep. 56:5-9, 57:18-58:6; *see also* Aff. of Counsel, Ex. 24, Willich Dep. 36:2-25, 55:2-5; Aff. of Counsel, Ex. 26, Ribi Dep. 143:22-144:13, 156:3-157:4, 165:7-22.

⁴² Aff. of Counsel, Exs. 21 and 22; Aff. of Counsel, Ex. 25, Briscoe Dep. 170:22-172:8.

⁴³ Aff. of Hammer, Ex. 1, § 3.A.

31. Ms. Hammer provided Sun Valley with the Supplemental Release Pursuant to City Administrator Employment Agreement on January 23, 2012 (“Supplemental Release”).⁴⁴

32. Leading up to the Supplemental Release, Ms. Hammer’s attorney, James Donoval, repeatedly advised Sun Valley that Ms. Hammer would not waive or release any non-contract claim, or type of claim other than those arising from the severance package.⁴⁵

33. The intent of Ms. Hammer’s release extended only to claims arising out of any dispute related to the severance package.⁴⁶ Given Ms. Hammer’s intent of the Supplemental Release, it succinctly stated:

Upon payment of the severance payment required pursuant to Section 3.A. of the City Administrator Employment Agreement dated June 1, 2008, I release the City of Sun Valley for any claims defined in Section 3.A. of the City Administrator Employment Agreement as were intended when the City Administrator Employment Agreement was entered into on June 1, 2008.⁴⁷

34. Ms. Hammer was subsequently paid all amounts of severance due to her under the Employment Agreement.

35. In June 2008, when the Employment Agreement was entered into by Ms. Hammer and Sun Valley, Mayor Willich was authorized and had the supporting unanimous vote of the City Council, to act for and on behalf of Sun Valley.⁴⁸

36. In June 2008, when the Employment Agreement was entered into, there was no intent by either party that Ms. Hammer was waiving or would waive any constitutional or statutory rights, or claims of discrimination, harassment, retaliation, or tort.⁴⁹

⁴⁴ Aff. of Hammer, ¶ 16, Ex. 2; AFFIDAVIT OF JAMES R. DONOVAL IN SUPPORT OF PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT (Aff. of Donoval”), filed contemporaneously herewith, ¶ 7.

⁴⁵ Aff. of Donoval, ¶ 6, Exs. 1-3.

⁴⁶ Aff. of Hammer, ¶¶ 4-5, 7-11, 16-17, 19-22; Aff. of Donoval, ¶¶ 5-9; see Aff. of Willich, ¶¶ 3, 5-9.

⁴⁷ Aff. of Hammer, Ex. 2.

⁴⁸ Aff. of Willich, ¶¶ 2-3, 5.

⁴⁹ Aff. of Willich, ¶¶ 2-9; Aff. of Hammer, ¶¶ 4-11, 16-22, Ex. 2.

37. In January 2012, when Ms. Hammer signed the Supplemental Release, she had no intent to relinquish any constitutional or statutory rights or waive any of the claims alleged in the present IPPEA case.⁵⁰

III. STANDARD OF REVIEW

Summary judgment in favor of Plaintiffs must be rendered by the Court “if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” I.R.C.P. 56(c). “A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.” I.R.C.P. 56(c). In making this determination, “the Court liberally construes all facts in favor of the nonmoving party and draws all reasonable inferences from the facts in favor of the nonmoving party.” *Camp Easton Forever, Inc. v. Inland NW Council BSA*, 332 P.3d 805, 809 (Idaho 2014) (citing *Hill v. Hill*, 140 Idaho 812, 813, 102 P.3d 1131, 1132 (2004)). The trial court is permitted flexibility in crafting the form of relief granted on summary judgment so long as the non-moving party is on notice that the court is considering the claim. *Kelly v. Hodges*, 119 Idaho 872, 876, 811 P.2d 48, 52 (Ct. App. 1991) (citing *Brummett v. Ediger*, 106 Idaho 724, 726, 682 P.2d 1271, 1273 (1984); *see also* I.R.C.P. 56(a-d)). However, “there is no genuine issue of material fact as to issues admitted by the parties in their pleadings.” *Esser Elec. v. Lost River Ballistics Tech., Inc.*, 145 Idaho 912, 919, 188 P.3d 854, 861 (2008). Summary judgment should be denied “if reasonable persons could reach differing conclusions or draw conflicting inferences from the evidence.” *Id.*

⁵⁰ Aff. of Hammer, ¶¶ 4-11, 16-22, Ex. 2; Aff. of Donoval, ¶¶ 6-9.

The party opposing the summary judgment motion “may not rest upon the mere allegations or denials of that party’s pleadings, but the party’s response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” I.R.C.P. 56(e). “[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there is no genuine issue of material fact.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). “If no disputed issues of material fact exist, then only a question of law remains.” *Camp Easton Forever, Inc.*, 332 P.3d at 809 (citing *Infanger v. City of Salmon*, 137 Idaho 45, 47, 44 P.3d 1100, 1102 (2002)).

“A nonmoving defendant has the burden of supporting a claimed affirmative defense on a motion for summary judgment.” *Chandler v. Hayden*, 147 Idaho 765, 771, 215 P.3d 485, 491 (2009); *see also* I.R.C.P. 56(e). The United States Supreme Court has found “no express or implied requirement in Rule 56 that the moving party support its motion with affidavits or other similar materials *negating* the opponent’s claim.” *Chandler*, 147 Idaho at 771, 215 P.3d at 491 (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (emphasis original in *Celotex*)). Because Sun Valley, as the nonmoving party in summary judgment, bears the burden of proof on the issue of its affirmative defenses at trial, it must set forth specific facts showing that there is a genuine issue for trial, and Ms. Hammer, as the moving party, is not required to negate Sun Valley’s affirmative defenses. *Chandler*, 147 Idaho at 769-71, 215 P.3d at 489-91.

IV. ARGUMENT

Sun Valley’s Fifth and Sixth Affirmative Defenses assert that Ms. Hammer waived or released any and all claims that she may have had against Sun Valley or any of its employees or elected officials pursuant to the contract imposed upon her by Sun Valley. However, the public

policy underlying the IPPEA prohibits any such waiver or release. And, even if Ms. Hammer, as a potential IPPEA plaintiff, could release or waive her right to prosecute statutory violations, such a release requires a showing of voluntary intent. Sun Valley cannot show any intent by Ms. Hammer to waive any statutory right or protection afforded by the IPPEA.⁵¹

The State of Idaho has seen fit to protect government employees and define the legality of a government employer's response when informed of allegations of misconduct by one employee against another. The declared intent of the IPPEA is that:

The legislature hereby finds, determines and declares that government constitutes a large proportion of the Idaho work force and that it is beneficial to the citizens of this state to protect the integrity of government by providing a legal cause of action for public employees who experience adverse action from their employer as a result of reporting waste and violations of a law, rule or regulation.

I.C. § 6-2101. This statement of intent is Idaho's declaration of public policy with respect to the protection of "whistleblower" employees. "Public policy may be found and set forth in the statutes, judicial decisions or the constitution." *Jesse v. Lindsley*, 146 Idaho 70, 75, 233 P.3d 1, 6 (2008) (quotation omitted). Sun Valley cannot relieve itself of liability arising from its, or its employee's, violations of the IPPEA by conditioning payment of Ms. Hammer's severance payment on her assent to a contractual exculpatory clause. Any such alleged waiver or release would be void as against the public policy of this State. "Whether a contract violates public policy is a question of law for the court to determine from all the facts and circumstances of each case." *Jesse*, 146 Idaho at 75, 233 P.3d at 6 (citation omitted).

Sun Valley is prohibited from contracting its way out of liability arising from violations of the IPPEA because such liability has been prescribed to it by Idaho's legislature. "[W]e do

⁵¹ Statement of Undisputed Material Facts ("Stmnt of Facts"), ¶¶ 31-37.

hold that where the legislature has addressed the rights and duties pertaining to personal injuries arising out of the relationship between two groups, *i.e.*, employers/employees ..., and has granted limited liability to one group in exchange for adherence to specific duties, then such duties become a ‘public duty’ within the exception to the general rule validating exculpatory contracts.” *Lee v. Sun Valley Co.*, 107 Idaho 976, 979, 695 P.2d 361, 364 (1984) (emphasis added). Under the IPPEA, government employers are subject to liability for enumerated relief when an employee proves by a preponderance of the evidence that the employer took an adverse action against the employee because the employee engaged in an activity that is protected by the Act. I.C. §§ 6-2104, 6-2106.

Prior to *Lee*, “the general rule ... that ‘express agreements exempting one of the parties [from liability] are to be sustained’ is subject to exceptions where: ‘(1) one party is at an obvious disadvantage in bargaining power; (2) a public duty is involved (public utility companies, common carriers).’” 107 Idaho at 978, 695 P.2d at 363 (quoting *Rawlings v. Layne & Bowler Pump Co.*, 93 Idaho 496, 499-500, 465 P.2d 107, 110-11 (1970)). The Court in *Lee* clarified the public duty exemption and affirmed that, in Idaho, “[certain] statutory rights and duties may not be waived or exempted by contract.” 107 Idaho at 979, 695 P.2d at 364 (citations omitted). And, “[e]ven though no express provisions be contained in the ... statute, it would seem that any attempt to nullify or limit the operation of law must be held to be invalid as being against public policy.” *Id.* (quoting 81 Am.Jur.2d Workmen’s Comp. § 51, p. 741 (1976)). The IPPEA falls within the class of statutory rights and duties that cannot be waived or released by contract because it pertains to injuries arising out of the relationship between government employers and their employees – a pairing specifically identified in *Lee*’s holding. *Id.*

Beginning in October 2009, Ms. Hammer made numerous complaints to Mayor Willich and City Attorney King regarding Councilman Ribi's acts of harassment, hostility and misconduct against her.⁵² Mr. Ribi's harassing conduct violated Section 7.5 of the City of Sun Valley Personnel Policies & Procedures Manual.⁵³ Ms. Hammer's acts of reporting Mr. Ribi's violative conduct, and her subsequent, related IHRC and court filings were all protected activities under the IPPEA.⁵⁴ I.C. § 6-2104. Prior to her termination, Sun Valley made public statements about Ms. Hammer being placed on administrative leave, and that she was being investigated for criminal misconduct.⁵⁵

On January 19, 2012, Mayor Briscoe, with the majority vote of the Sun Valley City Council, terminated Ms. Hammer from her position as City Administrator.⁵⁶ Sun Valley **purportedly** terminated Ms. Hammer "without cause."⁵⁷ Pursuant to Section 3 of her Employment Agreement, termination without cause required the City to make a severance payment to Ms. Hammer, under the following terms:

SECTION 3. TERMINATION AND SEVERANCE PAY

A. Employer, acting through the Mayor, may terminate Employee's employment, **without cause**, for any reason or no reason. Any such decision to terminate shall occur only after the Mayor consults with each member of the City Council. Upon such termination, Employer shall pay Employee, as severance pay, a lump sum cash payment equal to six (6) months, base salary described in Section 5, Subsection A.

The severance payment herein is intended to be Employee's **sole exclusive remedy** for any and all claims for damages of any kind arising from a termination **without cause** and such severance payment is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement. Accordingly,

⁵² Stmt of Facts, ¶ 4.

⁵³ Aff. of Counsel, Ex. 3, § 7.5.

⁵⁴ Stmt of Facts, ¶¶ 4, 12, 15-17, 20.

⁵⁵ Stmt of Facts, ¶¶ 13-14, 21-29.

⁵⁶ Stmt of Facts, ¶ 28.

⁵⁷ Stmt of Facts, ¶¶ 28-30.

Employee waives her right to bring a claim of any kind for damages against Employer arising from a termination **without cause**. Consequently, receipt of the severance payment is subject to execution of a release of all claims against the City of Sun Valley. A termination **without cause** shall not entitle Employee to an informal review under any section of the City of Sun Valley Personnel manual ("Personnel Manual").⁵⁸

Following a series of conversations between Mr. Donoval, as Ms. Hammer's attorney, and Sun Valley's attorney, Mr. Naylor, Ms. Hammer provided Sun Valley with the Supplemental Release on January 23, 2012.⁵⁹ Leading up to the Supplemental Release, Mr. Donoval repeatedly advised Sun Valley that Ms. Hammer would not waive or release any claim other than those arising from the severance package (*i.e.*, she would only waive contract and wage claims).⁶⁰ The intent of Ms. Hammer's release extended only to claims arising out of a dispute related to the severance package.⁶¹ In line with Ms. Hammer's position regarding the scope of Section 3.A. of the Employment Agreement, the Supplemental Release succinctly stated:

Upon payment of the severance payment required pursuant to Section 3.A. of the City Administrator Employment Agreement dated June 1, 2008, I release the City of Sun Valley for any claims defined in Section 3.A. of the City Administrator Employment Agreement as were intended when the City Administrator Employment Agreement was entered into on June 1, 2008.⁶²

Ms. Hammer was subsequently paid all amounts of severance due to her under the contract.⁶³

In June 2008, when the Employment Agreement was entered into by Ms. Hammer and Sun Valley, Mayor Willich was authorized, and had the supporting unanimous vote of the City Council, to hire Ms. Hammer.⁶⁴ At the time the Employment Agreement was entered, there was

⁵⁸ Aff. of Hammer, Ex. 1, § 3.A (emphasis original).

⁵⁹ Stmt of Facts, ¶¶ 31-32.

⁶⁰ Stmt of Facts, ¶ 32.

⁶¹ Stmt of Facts, ¶¶ 31-37.

⁶² Aff. of Hammer, Ex. 2.

⁶³ Stmt of Facts, ¶ 34

⁶⁴ Stmt of Facts, ¶¶ 35-37.

no intent by either party that Ms. Hammer was or would waive or release any statutory right or protection under the IPPEA.⁶⁵ And, when Ms. Hammer signed the Supplemental Release, she had absolutely no intent to release any statutory rights or waive any of the claims alleged in the present case.⁶⁶

Even if Sun Valley's extension of Section 3.A. of the Employment Agreement, to relieve it of liability imposed by the IPPEA, did not violate public policy, it would still fail. **"Clauses which exclude liability must speak clearly and directly to the particular conduct of the defendant which caused the harm at issue."** *Jesse*, 146 Idaho at 75, 233 P.3d at 6 (citing *Anderson & Nafziger v. G.T. Newcomb, Inc.*, 100 Idaho 175, 178, 595 P.2d 709, 712 (1979)). The language absolving Sun Valley of liability in Section 3 of the Employment Agreement "for any and all claims for damages of any kind arising from a termination without cause" is ambiguous and simply too broad.⁶⁷ See *Jesse*, 146 Idaho at 76-77, 233 P.3d at 7-8 (finding exculpatory clause in lease too broad to enforce). Neither the Supplemental Release nor the Employment Agreement cites to, acknowledges, or even infers waiver or release of her statutory rights under the IPPEA, or Sun Valley's liability for violations thereof.⁶⁸ No language within either document purported to waive the right to sue conferred upon Ms. Hammer by the IPPEA.⁶⁹ I.C. § 6-2105. Even if she could, Ms. Hammer did not waive or release any claims or relief under the IPPEA.⁷⁰

The Employment Agreement and Ms. Hammer's Supplemental Release cannot absolve Sun Valley of a possible violation of the IPPEA. *Lee*, 107 Idaho 979-80, 695 P.2d 364-65. "It is

⁶⁵ Stmt of Facts, ¶ 36.

⁶⁶ Stmt of Facts, ¶ 37.

⁶⁷ Aff. of Hammer, Ex. 1, § 3.A.

⁶⁸ Aff. of Hammer, Exs. 1 and 2.

⁶⁹ Aff. of Hammer, Exs. 1 and 2.

⁷⁰ Stmt of Facts, ¶¶ 32-37.

a well-settled general doctrine that the law will not sustain a covenant of immunity which protects against fraud or relieves one of a duty imposed by law for the public benefit.” *Lee*, 107 Idaho at 982, 695 P.2d at 367 (Bistline, J., dissenting) (quoting 17 Am.Jur.2d Contracts § 188, p. 557) (emphasis added in *Lee*)). The Court should find as a matter of law that Ms. Hammer did not and could not waive or release any right or protection provided under the IPPEA, and dismiss Sun Valley’s Fifth and Sixth Affirmative Defenses.


V. CONCLUSION

For the foregoing reasons, Plaintiff Sharon R. Hammer respectfully requests that the Court grant her Motion for Summary Judgment in its entirety, thereby entering judgment as a matter of law dismissing Defendant City of Sun Valley’s Fifth and Sixth Affirmative Defenses and finding that Ms. Hammer did not waive or release any right, privilege, or damage under the Idaho Protection of Public Employees Act.

DATED this 17th day of November, 2014.

JONES & SWARTZ PLLC

By



ERIC B. SWARTZ
JOY M. VEGA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of November, 2014, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan G. Naylor
NAYLOR & HALES, P.C.
950 W. Bannock Street, Suite 610
Boise, ID 83702-6103

☒ U.S. Mail
☐ Fax: 383-9516
☐ Hand Delivery
☐ Email: kirt@naylorhales.com

The Honorable Jonathan P. Brody
District Judge
Minidoka County Courthouse
8th & G Streets
P.O. Box 368
Rupert, ID 83350

☒ U.S. Mail
☐ Fax: (208) 436-5272
☐ Overnight Delivery
☐ Hand Delivery
☐ Email:

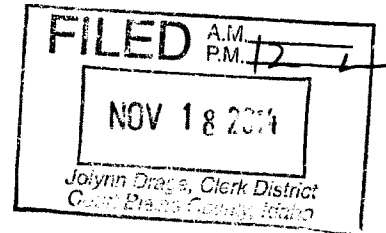


ERIC B. SWARTZ
JOY M. VEGA

ORIGINAL

Eric B. Swartz, ISB #6396
Joy M. Vega, ISB #7887
JONES & SWARTZ PLLC
1673 W. Shoreline Drive, Suite 200 [83702]
P.O. Box 7808
Boise, ID 83707-7808
Telephone: (208) 489-8989
Facsimile: (208) 489-8988
Email: eric@jonesandswartzlaw.com
joy@jonesandswartzlaw.com

Attorneys for Plaintiff Sharon R. Hammer



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**AFFIDAVIT OF SHARON R.
HAMMER IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

STATE OF IDAHO)
 : ss.
County of Ada)

I, Sharon R. Hammer, being first duly sworn upon oath, depose and state as follows:

1. I am the named Plaintiff in the above-captioned matter.
2. I have personal knowledge of the facts contained herein and if called upon to testify about the same, I could do so competently.

3. As a result of the City of Sun Valley's ("City" or "Sun Valley") national search of candidates, I was chosen, and ultimately appointed, to fill the position of City Administrator for Sun Valley.

4. In May of 2008, Sun Valley Mayor Wayne Willich provided me with a copy of the City Administrator Employment Agreement ("Employment Agreement"). Attached hereto as Exhibit 1 is a true and correct copy of the Employment Agreement that I entered into with the City, dated June 1, 2008.

5. The only Sun Valley official or employee that I recollect discussing any substantive issues regarding the Employment Agreement with was Mayor Willich.

6. It was my understanding from speaking with Mayor Willich that the Employment Agreement was drafted by then-Sun Valley City Attorney Rand Peebles. I understood from speaking with Mayor Willich that Mr. Peebles had used the same form for my Employment Agreement as that used for the employment agreement between the City and former Sun Valley City Administrator, Virginia Egger.

7. At the time I signed the Employment Agreement I understood from speaking with Mayor Willich that the provisions stated at Section 3.A., which provided that I would "waive [my] right to bring a claim of any kind for damages against [Sun Valley] arising from a termination **without cause**" only barred me from claims related to the severance package, including contractual salary or benefit damages that I may be entitled to. Exhibit 1, § 3.A. (emphasis original).

8. At the time I entered into the Employment Agreement I did not understand or intend that Section 3.A. of the Employment Agreement would waive any future non-contract severance claims I may have against Sun Valley or its employees and/or officials.

9. At the time I entered into the Employment Agreement I had no intent to waive or release any rights or protections afforded to me under the Idaho Protection of Public Employees Act, codified at Idaho Code, Title 6, Chapter 21 ("IPPEA").

10. At the time I entered into the Employment Agreement I had no intent to waive or release any legal claim that I may have arising from any state or federal statute, any state or federal constitutional right, or any common law or tort claim not arising from the severance package.

11. At no time prior to or after signing the Employment Agreement did Mayor Willich tell me that the intent of Section 3.A. was a blanket waiver of every legal right or claim imaginable, whether accrued or unaccrued.

12. From June 2008 until January 19, 2012, I was employed as the City Administrator for the City of Sun Valley, Idaho.

13. Beginning in or about October 2009 through at least September 2011, I made multiple complaints to Mayor Willich and City Attorney Adam King regarding City Councilman Nils Ribi's acts of harassment and hostility against me. My numerous complaints rendered no change in Mr. Ribi's behavior. He was consistently hostile and abusive to me.

14. On November 11, 2011, I was aware that City Councilmen Nils Ribi, DeWayne Briscoe, and Robert Youngman were holding a Special Council Meeting. After that meeting had adjourned, Mayor Willich and Mr. King came to my office and told me that each of the Councilmen had demanded my resignation as City Administrator because of undefined allegations of misconduct lodged against me by City Treasurer Michelle Frostenson and City Clerk Kelly Ek. I refused to resign.

15. On January 19, 2012, following the unanimous vote of the Sun Valley City Council, newly-seated Mayor DeWayne Briscoe terminated my employment with the City. My termination was purportedly "without cause" pursuant to Section 3.A. of the Employment Agreement.

16. On January 23, 2012, I signed a document entitled Supplemental Release Pursuant to City Administrator Employment Agreement, which merely referred to Section 3.A. of the Employment Agreement ("Supplemental Release"). The Supplemental Release was prepared by James R. Donoval, my husband and then-attorney. Attached hereto as Exhibit 2 is a true and correct copy of the Supplemental Release.

17. At the time I signed the Supplemental Release, I had endured over two years of harassment and verbal and emotional abuse by Mr. Ribi. During those two years, I had repeatedly complained to Mayor Willich, City Attorney Adam King, and other officials regarding Mr. Ribi's treatment of me.

18. At the time I signed the Supplemental Release, I was faced with two choices: 1) sign a release of claims as required by my Employment Agreement and receive the stated severance pay, or 2) refuse to sign a release of claims and forego payment of any severance package. In order to secure my immediate financial security, I was forced to sign a release of claims that was acceptable to the City.

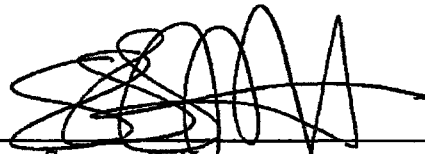
19. The language of the Supplemental Release purposely and intentionally does not include any mention that I was releasing any non-contract severance benefits.

20. The Supplemental Release purposely does not include any waiver or release of any state or federal statutory claim, any constitutional claim, or any other common law or tort claims that I may have against Sun Valley, its officials or employees.

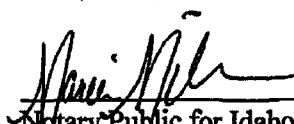
21. By signing the Supplemental Release I did not intend to, nor did I knowingly or voluntarily waive or release any non-contract claims, such as any claims arising from the IPPEA.

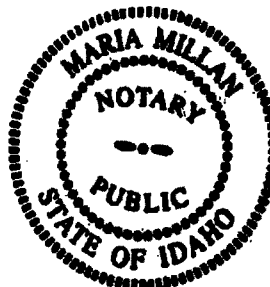
22. If I knew that the Supplemental Release was intended to cover claims other than those related to amounts owed on severance, I would not have signed it.

FURTHER AFFIANT SAYETH NAUGHT.


SHARON R. HAMMER

SUBSCRIBED AND SWORN to before me this 17th day of November, 2014.


Notary Public for Idaho
My Commission expires 9/24/20



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of November, 2014, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan G. Naylor
NAYLOR & HALES, P.C.
950 W. Bannock Street, Suite 610
Boise, ID 83702-6103

☒ U.S. Mail
☐ Fax: 383-9516
☐ Hand Delivery
☐ Email: kirt@naylorhales.com

The Honorable Jonathan P. Brody
District Judge
Minidoka County Courthouse
8th & G Streets
P.O. Box 368
Rupert, ID 83350

☒ U.S. Mail
☐ Fax: (208) 436-5272
☐ Overnight Delivery
☐ Hand Delivery
☐ Email:



ERIC B. SWARTZ
JOY M. VEGA

EXHIBIT 1
TO AFFIDAVIT OF SHARON R. HAMMER IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 1
TO AFFIDAVIT OF SHARON R. HAMMER IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

CONFIDENTIAL

ORIGINAL

**CITY ADMINISTRATOR
EMPLOYMENT AGREEMENT**

THIS CITY ADMINISTRATOR EMPLOYMENT AGREEMENT hereinafter "Agreement", effective the 1st day of June 2008, by and between the CITY OF SUN VALLEY, State of Idaho, a municipal corporation, hereinafter called "Employer", and SHARON R. HAMMER hereinafter called "Employee" is made in contemplation of the following:

RECITALS

WHEREAS, Employer desires to employ the services of said Employee as City Administrator of the City of Sun Valley ("City"); and

WHEREAS, Employee desires to accept employment as City Administrator of City pursuant to the terms and conditions hereof.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, and the above Recitals which are incorporated herein, the parties agree as follows:

SECTION 1. DUTIES

Employer hereby agrees to employ Employee as City Administrator of the City of Sun Valley to perform the duties customarily performed by City Administrators and which Employer, through the Mayor, shall from time to time assign. Employee shall perform such duties thoroughly, competently and with the highest level of professionalism as would be expected of a city administrator with Employee's background, qualifications and experience.

SECTION 2. EMPLOYMENT

A. Employee's Employment shall commence June 1, 2008. Employee shall report to work no later than June 23, 2008.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employer to terminate the services of Employee under the applicable provisions of Section 3 below.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from her position with Employer, subject only to the notice provision set forth in Section 3, Subsection C, of this Agreement.

SECTION 3. TERMINATION AND SEVERANCE PAY

A. Employer, acting through the Mayor, may terminate Employee's employment, **without cause**, for any reason or no reason. Any such decision to terminate shall occur only after the Mayor consults with each member of the City Council. Upon such termination, Employer shall pay Employee, as severance pay, a lump sum cash payment equal to six (6) months, base salary described in Section 5, Subsection A.

The severance payment herein is intended to be Employee's sole exclusive remedy for any and all claims for damages of any kind arising from a termination **without cause** and such severance payment is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement. Accordingly, Employee waives her right to bring a claim of any kind for damages against Employer arising from a termination **without cause**. Consequently, receipt of the severance payment is subject to execution of a release of all claims against the City of Sun Valley. A termination **without cause** shall not entitle Employee to an informal review under any section of the City of Sun Valley Personnel manual ("Personnel Manual").

B. In the event Employee is terminated for "**cause**", then Employer shall not be obligated to make any severance payment to Employee. "**Cause**" is defined as (i) a material breach of this Agreement; (ii) repeated neglect of Employee's duties as City Administrator; or (iii) misconduct such as theft, dishonesty, fraud, misrepresentation, embezzlement or other acts of willful misconduct, moral turpitude or criminal conduct.

C. Unless the parties otherwise agree, if Employee voluntarily resigns her position with Employer, then Employee shall give Employer three (3) months notice in advance; provided Employer may waive such three month advance notice in its discretion. In the event of a voluntary resignation, Employee **shall not** be entitled to any severance payment unless the Mayor shall decide otherwise in his sole discretion.

If Employee applies for employment elsewhere, and during the term of her employment hereunder is included in a list of ten or fewer candidates still under consideration for such employment, then, upon learning of her inclusion in such a list, Employee shall promptly inform the Mayor and each member of the City Council, which shall be confidential insofar as is permitted by applicable law.

D. In the event Employee is terminated by Employer, acting through the Mayor, for any reason, then Employer shall pay Employee, at the rate of compensation then being earned by Employee, all accrued and unused vacation entitlement in accordance with the then current policy for City Department Heads.

SECTION 4. DISABILITY

Unless otherwise required by law, if employee is permanently disabled or is otherwise unable to perform her duties because of sickness, accident, injury, mental incapacity or health for a period of four (4) successive weeks beyond any accrued sick leave, Employer shall have the option to terminate this Agreement, subject to the severance pay requirements of Section 3, Subsection A. However, Employee shall be compensated for any sick leave, vacation, holidays, compensatory time and other benefits accrued at the time Employee became disabled in accordance with Personnel Manual provisions which are applicable to management employees, **AND** reduced by the Disability payments received for the preceding twelve (12) months. If Employee suffers any permanent disability or is otherwise unable to perform her duties then sick leave, vacation, holidays, compensatory time, and other benefits shall cease to accrue at that time.

SECTION 5. COMPENSATION

A. Employer agrees to pay Employee for her services a salary (hereinafter "Base Salary") at the rate of One Hundred Ten Thousand Dollars (\$110,000.00), per year, payable in equal installments at the same time as other employees of the Employer are paid.

B. Employer shall match, not to exceed to five percent (5%) of Employee's base salary of Section A, contributions made by Employee to a 457 Plan.

C. Except as otherwise specifically provided in this Agreement, Employee shall receive the general employment benefits, including medical plan coverage, in the same amount and to the same extent as Employer grants to Department Heads.

D. During the course of Employee's term of employment, Employer will pay into the Public Employees' Retirement System of Idaho ("PERSI"), for the account of Employee, in accordance with the policy established by Employer for all employees of Employer generally.

E. Employer shall provide Employee a housing allowance of \$1,000.00 per month.

SECTION 6. SICK LEAVE AND VACATION

A. Upon commencement of employment, Employee shall have credited to her personal account forty (40) hours of sick leave and thereafter shall accrue sick leave at the same rate as City Department Heads employed by the City.

B. The leave entitlement granted to Employee pursuant to Subsection A of this Section 6 shall be used by Employee for time attributable to recovery from an illness or injury only and not as additional vacation time. If such sick leave is not used, it shall continue

to accrue, except that such entitlement shall not accrue beyond the maximum accrual limits established for City Department Heads in respect to the same entitlement. Upon termination of this Agreement Employee shall not be entitled to be paid for any accrued but unused leave time.

C. Upon commencement of employment, Employee shall have credited to her personal account forty (40) hours paid vacation leave and thereafter shall accrue vacation leave at the rate of one hundred-sixty (160) hours per year. Vacation accrual and use shall follow the procedures set forth in the Personnel Manual.

SECTION 7. PERFORMANCE EVALUATION

A. The Mayor shall review and evaluate the performance of the Employee at least once annually for consideration of a compensation increase. Further, the Mayor shall provide the Employee with a summary written statement of the evaluation.

B. Annually, the Mayor and Employee shall define such goals and performance objectives which they determine necessary for the proper operation of the City and in the attainment of the Employer's policy objectives and shall further establish a relative priority among those various goals and objectives. Said goals and objectives shall be in writing, and shall generally be attainable within the time limitations as specified and the annual operating and capital budgets.

SECTION 8. GENERAL EXPENSES AND MEMBERSHIPS

A. Employer recognizes that certain expenses of a non-personal and generally job-affiliated nature may be incurred by Employee from time to time, and hereby agrees to reimburse or to pay actual expenses in accordance with the travel and other policies of the Employer.

B. Employer shall pay the membership fees to the International City Management Association on behalf of Employee.

C. Employer shall reimburse Employee's direct expenses for relocating to the Wood River Valley, as substantiated by receipts, up to \$15,000.00.

SECTION 9. INDEMNIFICATION

Consistent with Idaho Code § 6-903, City agrees to indemnify and hold harmless Employee from claims, liabilities, or causes of action brought against Employee which are related to the course and scope of Employee's employment or which arise out of any act or omission within the course and scope of Employee's employment; provided, the City may refuse a defense or disavow and refuse to pay any judgment for Employee if it is

determined that such act or omission of the Employee was not within the course and scope of her employment or included malice or criminal intent.

SECTION 10. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

A. The Mayor, in consultation with the Employee, shall fix such other terms and conditions of employment, as he may determine from time to time to be appropriate, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement.

B. Except as herein specifically provided, all provisions of the Personnel Manual and regulations and rules of the Employer relating to vacation and sick leave, retirement contributions, holidays and other benefits which now exist or hereafter may be amended, also shall apply to Employee as they would to other employees of Employer.

SECTION 11. NOTICES

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows or to such other address as may be provided by written notice by a party:

- | | |
|------------------------------|---|
| (1) Employer: | Mayor
City of Sun Valley
P.O. Box 416
Sun Valley, ID 83353 |
| (2) Employee:
[Temporary] | 360 W. Illinois St.
#3F
Chicago, IL 60610 |

Alternatively, notices required pursuant to this Agreement may be personally served by hand delivery. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

SECTION 12. GENERAL PROVISIONS

A. The text herein shall constitute the entire agreement between the parties.

B. If any provision, or any portion thereof, in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion


thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.


IN WITNESS WHEREOF, the City of Sun Valley has caused this Agreement to be signed and executed in its behalf by its Mayor, and duly attested by its City Clerk, and the Employee has signed and executed this Agreement, as of the date and year first above written.

EMPLOYER

EMPLOYEE

CITY OF SUN VALLEY, a
municipal corporation

By: 
Wayne Willich, Mayor


Sharon R. Hammer

ATTEST:

KELLY EK by: 
City Clerk

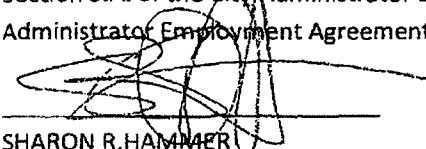
EXHIBIT 2
TO AFFIDAVIT OF SHARON R. HAMMER IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 2
TO AFFIDAVIT OF SHARON R. HAMMER IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

HAMMER 000303

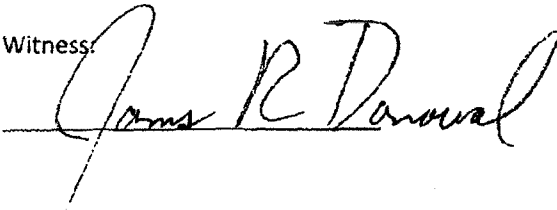
SUPPLEMENTAL RELEASE PURSUANT TO CITY ADMINISTRATOR EMPLOYMENT AGREEMENT

Upon payment of the severance payment required pursuant to Section 3.A. of the City Administrator Employment Agreement dated June 1, 2008, I release the City Of Sun Valley for any claims defined in Section 3.A. of the City Administrator Employment Agreement as were intended when the City Administrator Employment Agreement was entered into on June 1, 2008.


SHARON R. HAMMER

1/23/12
DATE:

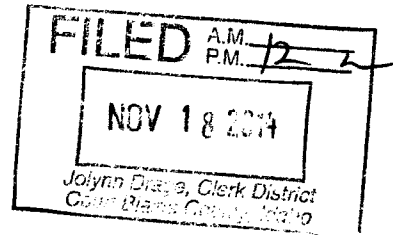
Witness:



HAMMER 000303

Eric B. Swartz, ISB #6396
Joy M. Vega, ISB #7887
JONES & SWARTZ PLLC
1673 W. Shoreline Drive, Suite 200 [83702]
P.O. Box 7808
Boise, ID 83707-7808
Telephone: (208) 489-8989
Facsimile: (208) 489-8988
Email: eric@jonesandswartzlaw.com
joy@jonesandswartzlaw.com

Attorneys for Plaintiff Sharon R. Hammer



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**AFFIDAVIT OF JAMES R.
DONOVAL IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

STATE OF IDAHO)
 : ss.
County of Ada)

I, James R. Donoval, being first duly sworn upon oath, depose and state as follows:

1. I have personal knowledge of the facts contained herein and if called upon to testify about the same, I could do so competently.

2. I am married to Sharon R. Hammer, who from June 2008 to January 19, 2012, was the City Administrator of the City of Sun Valley, Idaho ("Sun Valley").

3. I am a licensed attorney in Idaho, having been sworn-in to the Idaho State Bar in October 2009, after having practiced law in Illinois since 1988.

4. Beginning in November 2011, I have represented Ms. Hammer in various matters associated with legal disputes between her, Sun Valley, and various Sun Valley officials and employees.

5. On January 19, 2012, Ms. Hammer was terminated from her employment with Sun Valley, purportedly "without cause" pursuant to Section 3.A. of her City Administrator Employment Agreement with the City ("Employment Agreement"). *See* Exhibit 1 to Affidavit of Sharon R. Hammer in Support of Plaintiff's Motion for Summary Judgment, filed contemporaneously herewith.


6. Prior to Ms. Hammer's termination, I sent emails and at least one letter to Kirtlan Naylor, attorney for Sun Valley, regarding Sun Valley's intentions related to Ms. Hammer and the impact of Section 3.A. of her Employment Agreement. Attached hereto as Exhibit 1 is a true and correct copy of an email I sent to Mr. Naylor on January 13, 2012, specifically clarifying that, if Sun Valley terminated Ms. Hammer pursuant to the "without cause" provision of the Employment Agreement, "her contract does not require her to waive any tort or any other non contract claims she may have with the City." Attached hereto as Exhibit 2 is a true and correct copy of an email I sent to Mr. Naylor on January 14, 2012, that specifically stated that Ms. Hammer "has a property interest in her employment which we will immediately seek to enforce." Attached hereto as Exhibit 3 is a true and correct copy of a letter I sent to Mr. Naylor on January 18, 2012, again specifically stating that Ms. Hammer would not waive any non-contract severance claims.

7. On January 23, 2012, Ms. Hammer signed a document entitled Supplemental Release Pursuant to City Administrator Employment Agreement ("Supplemental Release"), which was prepared by me and which merely referred to Section 3.A. of the Employment Agreement. See Exhibit 2 to Affidavit of Sharon R. Hammer in Support of Plaintiff's Motion for Summary Judgment.

8. The Supplemental Release purposely omitted any reference to a release of any non-contract severance or benefits claims. In drafting the Supplemental Release, neither I nor Ms. Hammer intended that she would be waiving or releasing any claim other than claims for severance amounts or benefits beyond the severance package that Sun Valley agreed to pay her.s

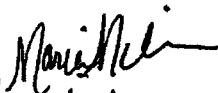
9. The Supplemental Release purposely does not include any release or waiver of any claim, right or protection Ms. Hammer has under any state or federal statute, any constitutional right or protection, or any other common law or tort claims against Sun Valley, its officials or employees. The Supplemental Release purposely does not include any waiver or release of any rights or protections afforded to Ms. Hammer under the Idaho Protection of Public Employees Act, codified at Idaho Code, Title 6, Chapter 21 ("IPPEA").

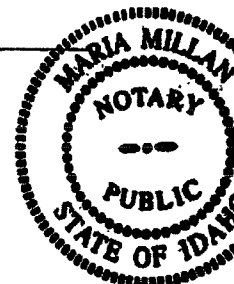
FURTHER AFFIANT SAYETH NAUGHT.


JAMES R. DONOVAL

SUBSCRIBED AND SWORN to before me this 17th day of November, 2014.

Notary Public for Idaho
My Commission expires 9/24/20


9/24/20



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of November, 2014, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan G. Naylor
NAYLOR & HALES, P.C.
950 W. Bannock Street, Suite 610
Boise, ID 83702-6103

☒ U.S. Mail
☐ Fax: 383-9516
☐ Hand Delivery
☐ Email: kirt@naylorhales.com

The Honorable Jonathan P. Brody
District Judge
Minidoka County Courthouse
8th & G Streets
P.O. Box 368
Rupert, ID 83350

☒ U.S. Mail
☐ Fax: (208) 436-5272
☐ Overnight Delivery
☐ Hand Delivery
☐ Email:


ERIC B. SWARTZ
JOY M. VEGA

EXHIBIT 1
TO AFFIDAVIT OF JAMES R. DONOVAL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 1
TO AFFIDAVIT OF JAMES R. DONOVAL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

HAMMER 000263

From: jdonoval <jdonoval@aol.com>
To: kirt <kirt@naylorhales.com>
Subject: Re: City Administrator Contract
Date: Fri, Jan 13, 2012 10:14 am

Kirt:

If the City is going to terminate Sharon without cause her contract does not require her to waive any tort or any other non contract claims she may have with the City. So if the City is going to terminate her without cause, we should work on a separation agreement that has the correct waiver language in it, and get it over with.

If the City is going to try to terminate her with cause, especially without any hearings or anything, you know that is going to face continued litigation regarding that issue alone.

As to your other email, Sharon and I have given you several settlement offers that you have dismissed outright, especially during Mayor Willich's tenure, and I have asked on several occasions to sit with you and your client and you have refused - so we did not believe we were incorrect in filing the pleading.

I would much rather have you provide me the settlement terms rather than the other way around, as thus far you have rejected anything we have put before you and have not countered. Please note that if you want a settlement of all matters, including any tort or IPPEA claims Sharon has, we are expecting that it also includes a dismissal of Mr. Ribl's and Ms. Ribl's claims against me. And regardless of the language, we thought that dismissing the suit first was a good faith effort to settle the issues.

Finally Kirt, there have been assertions all over the place of everyone doing bad acts. I am sorry for that. And you have probably not even been privy to some of the things that I have been subject to from Mr. Roark. However, the community here thinks this is a travesty and a waste of money and not what governments are supposed to be doing. However, if we are going to get to some resolution to this, it needs to give Sharon back her reputation. No one is going to win on every issue and we need to discuss the matters to get it resolved. I don't care if you record our conversations. But as much as we do not see eye to eye - we both need to get to some common ground otherwise this is going to go on forever.

Best Regards

JIM

Please call me when you get this to start working on where we are going..

-----Original Message-----

From: Kirtlan Naylor <kirt@naylorhales.com>
To: jdonoval <jdonoval@aol.com>
Sent: Thu, Jan 12, 2012 7:32 pm
Subject: RE: City Administrator Contract

You may make any offer in writing to me. And I will communicate it to my clients.

Kirtlan G. Naylor

Direct 208 947-2070

N NAYLOR & HALES, P.C.
ATTORNEYS AT LAW

This email is a confidential communication.

HAMMER 000263

EXHIBIT 2
TO AFFIDAVIT OF JAMES R. DONOVAL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 2
TO AFFIDAVIT OF JAMES R. DONOVAL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

HAMMER 000272

From: jdonoval <jdonoval@aol.com>
To: kirt <kirt@naylorhales.com>
Subject: Re: Resolution follow up
Date: Sat, Jan 14, 2012 7:30 am

The Nils Ribi law suit is not an issue - I will fight that myself.

If the City Council terminates Sharon on Thursday, we will be in Court immediately to see whether your theory of no contract extension flies. And regardless of whether you terminate her "without cause" - she has a property interest in her employment which we will immediately seek to enforce. And of course I will immediately re-file the IPPEA claims. Is that what you really want - to continue litigation over this?

JIM

-----Original Message-----

From: Kirtlan Naylor <kirt@naylorhales.com>
To: jdonoval <jdonoval@aol.com>
Sent: Fri, Jan 13, 2012 5:32 pm
Subject: Resolution follow up

Jim,

I should tell you that since my earlier emails, I have had an opportunity to discuss this with my clients, so any of the ideas I floated earlier are withdrawn, even though I had no specific authority.

I can tell you that Nils Ribi's lawsuit is separate from and will not be linked with any resolution of the all the Sun Valley lawsuits (including against city officials).

Also, we do not agree that the language in the employment agreement is limited in releasing just contract claims. In any event, unless you can propose something more beneficial to the City than the terms of the Employment Agreement, then the City might as well proceed to terminate Sharon without cause. We are confident that the contract, which she drafted by reference with the extension will be interpreted against the drafter.

So, at this time, the ball is in your court to propose a reasonable offer.

I look forward to hearing from you.

Kirtlan G. Naylor

Direct 208 947-2070

N NAYLOR & HALES, P.C.
950 WEST BANNOCK ST., SUITE 610 BOISE, ID 83702

This email is a confidential communication.
If it was sent to you mistakenly,
please notify me and destroy your copy.

EXHIBIT 3
TO AFFIDAVIT OF JAMES R. DONOVAL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 3
TO AFFIDAVIT OF JAMES R. DONOVAL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

JAMES R. DONOVAL

Attorney At Law

4325 Fairway Nine Condos

PO Box 1499

Sun Valley, ID 83353

(312) 859-2029; (208) 721-7383

jdonoval@aol.com

January 18, 2012

Mr. Kirtlan Naylor
950 W. Bannock St., Suite 610
Boise, ID 83702

Re: Sharon R. Hammer Contract And Termination

Dear Mr. Naylor:

I want to reiterate and add to some of the things that we mentioned in our just completed discussion.

First, should the City Of Sun Valley seek to terminate Ms. Hammer's contract without cause, and pay her the severance payment described therein, the language related to such states : "The severance payment herein is intended to be the Employee's sole exclusive remedy for any and all claims of damages of any kind arising from a termination without cause and such severance payment is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement. Accordingly, Employee waives her right to bring a claim of any kind for damages against Employer arising from a termination without cause. Consequently, receipt of the severance payment is subject to execution of a release of all claims against the City Of Sun Valley." Please note that this language was drafted by then Sun Valley City Attorney Rand Peebles. As I have stated, the causes of action Ms. Hammer possesses for tort, including the underlying harassment allegations against Council Member Ribí and several other claims, do not arise "from a termination", they arise out of separate incidents. Nor is it rational to assert that Ms. Hammer would have waived any non-contract damage claims she would have prospectively been entitled to (i.e. personal injury claims) when she signed the agreement. So as I have stated, If the City Of Sun Valley proposes to terminate Ms. Hammer without cause and pay her the severance payment in the contract, she will only sign a waiver that states the exact language in the contract cited above and nothing more.


I also want to remind you that on at least two separate occasions (to Patti Ball and to Mayor Willich and the Sun Valley City Council), Ms. Hammer has provided notice that Ms. Frostenson has

shorted her retirement account by \$1,642 and that Ms. Frostenson has failed to accrue 120 hours of sabbatical vacation Ms. Hammer was entitled to (and was charged for) in June of 2011 equaling \$6,832. Please ensure that if the City Of Sun Valley terminates Ms. Hammer that those errors are corrected as part of Ms. Hammer's final termination payment.

If the City Of Sun Valley terminates Ms. Hammer with cause, or asserts that the contract is invalid or expired, then of course she does not waive any claims of any sort, including in regards to the contract itself.

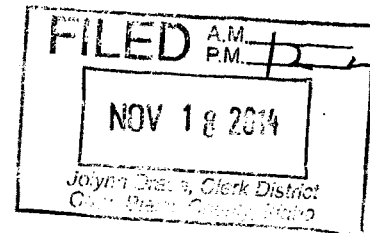
Again, I want to remind you that should Ms. Hammer be required to litigate any matters related to Ms. Hammer's severance, then there is the potential that she would be entitled to treble damages and attorney's fees for the unpaid amounts pursuant to Idaho Statutes 45-615. Also, please note that should Ms. Hammer be terminated, she is making demand for payment of all compensation due within forty eight hours (48) as is required by Idaho Statutes 45-606.

Very Truly Yours,


JAMES R. DONOVAL

Jd:jd

Cc: S. Hammer



Eric B. Swartz, ISB #6396
 Joy M. Vega, ISB #7887
JONES & SWARTZ PLLC
 1673 W. Shoreline Drive, Suite 200 [83702]
 P.O. Box 7808
 Boise, ID 83707-7808
 Telephone: (208) 489-8989
 Facsimile: (208) 489-8988
 Email: eric@jonesandswartzlaw.com
 joy@jonesandswartzlaw.com
Attorneys for Plaintiff Sharon R. Hammer

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
 and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**AFFIDAVIT OF WAYNE
 WILlich IN SUPPORT OF
 PLAINTIFF'S MOTION FOR
 SUMMARY JUDGMENT**

STATE OF IDAHO)
 : ss.
 County of Blaine)

I, Wayne Willich, being first duly sworn upon oath, depose and state as follows:

1. I have personal knowledge of the facts contained herein and if called upon to testify about the same, I could do so competently.

2. From January of 2008 until January 3, 2012, I was the duly elected Mayor of Sun Valley, Idaho.

AFFIDAVIT OF WAYNE WILlich IN SUPPORT OF PLAINTIFF'S
 MOTION FOR SUMMARY JUDGMENT - 1

3. In June of 2008, the City of Sun Valley entered into a written City Administrator Employment Agreement ("Employment Agreement") with Sharon R. Hammer.

4. The Employment Agreement was drafted by then-Sun Valley City Attorney Rand Peebles. The Employment Agreement was based on the contract that had been entered into between former Sun Valley City Administrator Virginia Egger and Sun Valley.

5. I was the sole Sun Valley official or representative who discussed any terms of the Employment Agreement with Ms. Hammer.

6. At the time I entered into the Employment Agreement with Ms. Hammer, there was no discussion related to whether Section 3, Paragraph A, waived any statutory rights, potential retaliation claims, or other non-contract claims should the Employment Agreement be terminated.

7. At the time I entered into the Employment Agreement with Ms. Hammer, there was no intent on my part, as Sun Valley Mayor, that Ms. Hammer waive any statutory rights or future discrimination, harassment, retaliation or other non-contract claims if the City of Sun Valley chose to ever terminate the Employment Agreement pursuant to the "without cause" provisions of Section 3, Paragraph A.

8. The waiver provision of Section 3, Paragraph A, had been carried over as one of the provisions that had been included in Ms. Egger's contract.

9. Any assertion by the City of Sun Valley that Ms. Hammer intended to or agreed to waive any statutory right, discrimination claim, harassment claim, retaliation claim, or tort claim, are not based on mine or Ms. Hammer's discussions or understanding of the Employment Agreement when it was entered into in June 2008.




10. During my time as Mayor, Ms. Hammer, as City Administrator, reported solely and directly to me as the Mayor of Sun Valley.

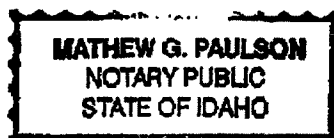
11. Beginning in ~~the~~ ^{late} 2009 through the autumn of 2011, Ms. Hammer repeatedly reported to me that Councilman Nils Ribi had been hostile to her and had harassed her. A common cause of Councilman Ribi's hostile behavior seemed to be because Ms. Hammer had told Councilman Ribi that she took direction from me and that he was not authorized to give Ms. Hammer any directions without my approval.


12. In particular, it is my opinion that Councilman Ribi treated Ms. Hammer improperly and in a hostile manner, when she told him that she would follow my direction and not his in regards to Sun Valley-related matters.

FURTHER AFFIANT SAYETH NAUGHT.


WAYNE WILlich

SUBSCRIBED AND SWORN to before me this 17th day of November, 2014.




Notary Public for Idaho
My Commission expires Apr 14, 2018



CERTIFICATE OF SERVICE

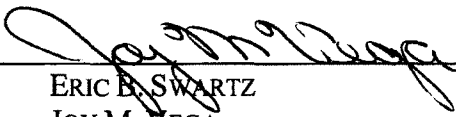
I HEREBY CERTIFY that on this 17th day of November, 2014, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan G. Naylor
NAYLOR & HALES, P.C.
950 W. Bannock Street, Suite 610
Boise, ID 83702-6103

☒ U.S. Mail
☐ Fax: 383-9516
☐ Hand Delivery
☐ Email: kirt@naylorhales.com

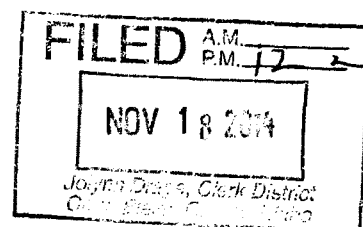
The Honorable Jonathan P. Brody
District Judge
Minidoka County Courthouse
8th & G Streets
P.O. Box 368
Rupert, ID 83350

☒ U.S. Mail
☐ Fax: (208) 436-5272
☐ Overnight Delivery
☐ Hand Delivery
☐ Email:



ERIC B. SWARTZ
JOY M. VEGA

Eric B. Swartz, ISB #6396
Joy M. Vega, ISB #7887
JONES & SWARTZ PLLC
1673 W. Shoreline Drive, Suite 200 [83702]
P.O. Box 7808
Boise, ID 83707-7808
Telephone: (208) 489-8989
Facsimile: (208) 489-8988
Email: eric@jonesandswartzlaw.com
joy@jonesandswartzlaw.com



Attorneys for Plaintiff Sharon R. Hammer

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**AFFIDAVIT OF COUNSEL IN
SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

STATE OF IDAHO)
 : ss.
County of Ada)

I, Joy M. Vega, being first duly sworn upon oath, depose and state as follows:

1. I am an attorney with the law firm of Jones & Swartz PLLC, and am authorized to practice law before this and all courts of the State of Idaho.

2. I am counsel of record for Plaintiff Sharon R. Hammer in the above action.

3. Attached hereto as Exhibit 1 is a true and correct copy of the September 17, 2009 City Administrator Employment Agreement Extension between Ms. Hammer and City of Sun Valley ("Sun Valley").

4. Attached hereto as Exhibit 2 is a true and correct copy of email exchanges between Ms. Hammer and Wayne Willich dated December 28, 2011–December 29, 2011, as produced in discovery.

5. Attached hereto as Exhibit 3 is a true and correct copy of the City of Sun Valley Personnel Policies & Procedures Manual.

6. Attached hereto as Exhibit 4 is a true and correct copy of the text message from Michelle Frostenson to Nils Ribi dated November 10, 2011, as produced by Defendants.

7. Attached hereto as Exhibit 5 is a true and correct copy of the email exchange between Michelle Frostenson and Adam King dated November 15, 2011–November 16, 2011, as produced in discovery.

8. Attached hereto as Exhibit 6 is a true and correct copy of the email from Kelly Ek to Adam King dated November 15, 2011, as produced in discovery.

9. Attached hereto as Exhibit 7 is a true and correct copy of the notice of Special Council Meeting, dated November 10, 2011, as produced in discovery.

10. Attached hereto as Exhibit 8 is a true and correct copy of the notice of paid administrative leave from Wayne Willich to Ms. Hammer, dated November 18, 2011, as produced in discovery.

11. Attached hereto as Exhibit 9 is a true and correct copy of an email from Ms. Hammer to Wayne Willich dated December 2, 2011, as produced in discovery.

12. Attached hereto as Exhibit 10 is a true and correct copy of an Idaho Mountain Express news article dated November 30, 2011, as produced in discovery.

13. Attached hereto as Exhibit 11 is a true and correct copy of the November 23, 2011 AFFIDAVIT OF NILS RIBI IN OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER filed in *Sharon R. Hammer v. Nils Ribi, City of Sun Valley, Adam King, and Robert Youngman*, Fifth Judicial District of the State of Idaho, Blaine County Case No. CV-2011-928, without exhibits.

14. Attached hereto as Exhibit 12 is a true and correct copy of the December 28, 2011 Notice of Tort Claim from Ms. Hammer to Sun Valley City Clerk Kelly Ek, as produced in discovery.

15. Attached hereto as Exhibit 13 is a true and correct copy of the December 15, 2011 Charge of Discrimination filed with the Idaho Human Rights Commission by Ms. Hammer, as produced in discovery.

16. Attached hereto as Exhibit 14 is a true and correct copy of an email from Wayne Willich to Ms. Hammer dated December 23, 2011, as produced in discovery.

17. Attached hereto as Exhibit 15 is a true and correct copy of an email exchange between Ms. Hammer and Wayne Willich dated December 29, 2011, as produced in discovery.

18. Attached hereto as Exhibit 16 is a true and correct copy of the Notice of Paid Administrative Leave Pending Investigation from DeWayne Briscoe to Ms. Hammer, dated January 4, 2012, as produced in discovery.

19. Attached hereto as Exhibit 17 is a true and correct copy of the Notice of Administrative Investigation; Order to Participate in Interview Process and Advice of Rights, from DeWayne Briscoe to Ms. Hammer, dated January 4, 2014, as produced in discovery.

20. Attached hereto as Exhibit 18 is a true and correct copy of a statement by DeWayne Briscoe published in the Idaho Mountain Express, dated January 6, 2012, as produced in discovery.

21. Attached hereto as Exhibit 19 is a true and correct copy of the January 9, 2012 AFFIDAVIT OF DEWAYNE BRISCOE in *Sharon R. Hammer v. Nils Ribi, City of Sun Valley, Adam King, and Robert Youngman*, Fifth Judicial District of the State of Idaho, Blaine County Case No. CV-2011-928.

22. Attached hereto as Exhibit 20 is a true and correct copy of the January 16, 2012 Press release issued by Sun Valley, as produced in discovery.

23. Attached hereto as Exhibit 21 is a true and correct copy of an advertisement published by Sun Valley in the Idaho Mountain Express newspaper following Ms. Hammer's termination on January 19, 2012, as produced by Defendants in black and white, as well as a color copy of the same.

24. Attached hereto as Exhibit 22 is a true and correct copy of an email from Kelly Ek to Jerry at the Idaho Mountain Express, dated January 18, 2012, as produced by Defendants.

25. Attached hereto as Exhibit 23 is a true and correct copy of the June 2, 2014 letter and enclosures from Wayne Willich to Eric B. Swartz and Kirtlan Naylor.

26. Attached hereto as Exhibit 24 is a true and correct copy of the May 28, 2014 deposition testimony of Wayne Willich ("Willich Dep.").

27. Attached hereto as Exhibit 25 is a true and correct copy of the May 29, 2014 deposition testimony of DeWayne Briscoe ("Briscoe Dep.").

28. Attached hereto as Exhibit 26 is a true and correct copy of the May 30, 2014 deposition testimony of Nils A. Ribi ("Ribi Dep."), without exhibit.

29. Attached hereto as Exhibit 27 is a true and correct copy of the May 20, 2014 deposition testimony of Robert Youngman ("Youngman Dep."), without exhibits.

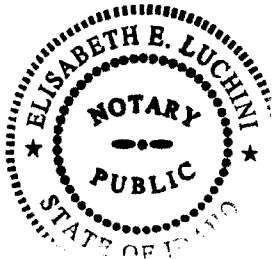
30. Attached hereto as Exhibit 28 is a true and correct copy of the May 21, 2014 deposition testimony of Franz M. Suhadolnik ("Suhadolnik Dep.").

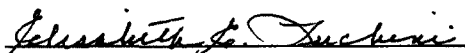
31. Attached hereto as Exhibit 29 is a true and correct copy of the June 10, 2014 deposition testimony of Joan Lamb ("Lamb Dep.").

FURTHER AFFIANT SAYETH NAUGHT.


JOY M. VEGA

SUBSCRIBED AND SWORN TO before me this 17th day of November, 2014.




Notary Public for Idaho
My Commission expires 07-13-2018

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of November, 2014, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan G. Naylor
NAYLOR & HALES, P.C.
950 W. Bannock Street, Suite 610
Boise, ID 83702-6103

☒ U.S. Mail
☐ Fax: 383-9516
☐ Hand Delivery
☐ Email: kirt@naylorhales.com

The Honorable Jonathan P. Brody
District Judge
Minidoka County Courthouse
8th & G Streets
P.O. Box 368
Rupert, ID 83350

☒ U.S. Mail
☐ Fax: (208) 436-5272
☐ Overnight Delivery
☐ Hand Delivery
☐ Email:


ERIC B. SWARTZ
JOY M. VEGA

EXHIBIT 1
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 1
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

CITY ADMINISTRATOR
EMPLOYMENT AGREEMENT EXTENSION

This Employment Agreement Extension ("Extension") is made and entered into as of this 17th day of September 2009, by and between the City of Sun Valley, State of Idaho, a municipal corporation, hereinafter referred to as "Employer" and Sharon R. Hammer hereinafter referred to "Employee," collectively known as the "Parties," is made in contemplation of the following:

RECITALS

WHEREAS, Employer and Employee are parties to the City Administrator Employment Agreement; and

WHEREAS, Employer and Employee wish to extend the original Employment Agreement effective June 1, 2008; and

WHEREAS, the Parties wish to amend the Employment Agreement as set forth in this Extension.

TERMS AND CONDITIONS

SECTION 1. TERM

The term of the Employment Agreement Extension is one year commencing on June 1, 2009 and fully incorporates all terms of the Employment Agreement, originally executed by the Parties and effective on June 1, 2008, and this Employment Agreement Extension.

SECTION 2. EMPLOYMENT

The Employment Agreement shall automatically renew on its anniversary date (June 1st) for a period of one (1) year hereinafter unless notice that the Agreement shall terminate is given at least sixty (60) days before the expiration date. In the event the Agreement is not renewed, all compensation, benefits and requirements of the Employment Agreement shall remain in effect until the expiration of the term of the Employment Agreement unless Employee voluntarily resigns.

SECTION 3. COMPENSATION

A. Employer agrees to pay Employee for her services a salary (hereinafter "Base Salary") at the rate of One Hundred Sixteen Thousand One Hundred and Thirty Two Dollars (\$116,132.00), per year, beginning October 1, 2009 payable in equal installments at the same time as other employees of the Employer are paid.

B. Employer shall match, not to exceed five percent (5%) of Employee's base salary of Section A above, contributions made by Employee to a 457 Plan or other qualified retirement program.

C. Consideration shall be given on an annual basis to increased compensation. Increased compensation can be in the form of a salary increase and/or bonus and/or increase in housing allowance.

D. Employer shall provide Employee a housing allowance of One Thousand One Hundred and Twenty Five Dollars (\$1,125.00) per month beginning October 1, 2009.

SECTION 4. NOTICE

Employee: Sharon Hammer
P.O. Box 1499
Sun Valley, ID 83353


SECTION 5. GENERAL

All other provisions of the City Administrator Employment Agreement effective June 1, 2008 shall remain in full force and affect.

EMPLOYER
CITY OF SUN VALLEY, a
Municipal corporation

EMPLOYEE

By: 
Wayne Willich, Mayor

By: 
Sharon R. Hammer

ATTEST:

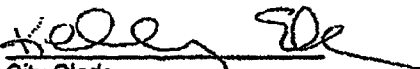

City Clerk

EXHIBIT 2
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 2
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Sharon Hammer

From: Wayne Willich
Sent: Thursday, December 29, 2011 9:26 AM
To: Sharon Hammer
Subject: RE: employment contract

Sharon, yes, we had multiple conversations during the Summer about your contract. It always was cut short with Capital plan, bond election, budget, etc. issues.

The Mayor

From: Sharon Hammer
Sent: Wednesday, December 28, 2011 4:02 PM
To: Wayne Willich
Subject: RE: employment contract
Importance: High

Mayor: Regardless of what the ICRMP attorneys think, please confirm that you told me that my contract would be extended based on our discussions.

Sharon R. Hammer
City Administrator
Sun Valley City Hall
P.O. Box 416
81 Elkhorn Road
Sun Valley, ID 83353
208.622.4438

From: Wayne Willich
Sent: Wednesday, December 28, 2011 2:31 PM
To: Sharon Hammer
Subject: RE: employment contract

Sharon, it was confirmed by the ICRMP attorneys that your contract is valid through June 22nd, 2012.

The Mayor

From: Sharon Hammer
Sent: Wednesday, December 28, 2011 2:26 PM
To: Wayne Willich
Subject: employment contract

HAMMER 000231

Mayor: Please confirm our conversations during summer and fall 2011 regarding my employment contract with the City. We had multiple conversations in which you indicated that you would extend my employment contract through June 22, 2012.

Sharon R. Hammer
City Administrator
Sun Valley City Hall
P.O. Box 416
81 Elkhorn Road
Sun Valley, ID 83353
208.622.4438

EXHIBIT 3
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 3
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT



**CITY OF SUN VALLEY
PERSONNEL POLICIES & PROCEDURES MANUAL**

Adopted by the Mayor and City Council
Resolution No. 1997-2 January 16, 1997
Resolution No. 1997-9 January 16, 1997
Resolution No. 2001-03 May 16, 2001
Resolution No. 2004-08 November 18, 2004
Resolution No. 2007-06 February 15, 2007
Resolution No. 2007-12 March 15, 2007



WELCOME!

Welcome to the City of Sun Valley. We congratulate you on your decision to join us. We trust you will be happy with this decision. Every effort will be made on our part to accomplish this end.

The City of Sun Valley has carefully selected you to be one of its Employees. We realize that our strength and future growth depends directly on the efforts of all our Employees. Cities are successful due to the results obtained from sincere and enthusiastic Employees who work together as a team to provide the highest level of services to residents and visitors.

All jobs are important at the City of Sun Valley. No matter what your assignment may be, you can be assured that it is important and that the degree of efficiency and professionalism you demonstrate will have bearing on your future and on the future of the City organization and the residents and visitors we serve.

MISSION STATEMENT

We, the Employees and elected officials of the City of Sun Valley, are dedicated to providing a positive environment wherein the quality of life and economic well-being of all who live, visit and work in Sun Valley may be preserved.

The success of the City of Sun Valley relies on a moral sense of stewardship and adherence to the ideals of excellence in service to its citizens through the personal contributions of all.



TABLE OF CONTENTS

	Page Numbers
SECTION 1: GENERAL POLICIES	
1.1 Purpose.....	1-1
1.2 Establishment of Policies and Procedure.....	1-1
1.3 Equal Employment Opportunity	1-1
1.4 At Will Employment Policy.....	1-2
1.5 Employment Agreements	1-2
SECTION 2: ADMINISTRATION OF PERSONNEL POLICIES & PROCEDURES	
2.1 General Administration	2-1
2.2 Distribution.....	2.1
SECTION 3: EMPLOYMENT PRACTICES	
3.1 Appointing Authority.....	3-1
3.2 Administration Authority	3-1
3.3 Personnel Records.	3-1
3.4 Recruitment and Selection Procedures	3-2
3.5 Appointments.....	3-3
3.6 Employment of Relatives	3-3
3.7 Transfers	3-4
3.8 Resignations/Dismissals.....	3-4
3.9 Hours of Work	3-4
3.10 Attendance and Punctuality	3-4
3.11 Work Schedules	3-5
3.12 Resident Requirements	3-5
3.13 City Vehicles.....	3-5
3.14 Travel Expense Reimbursements	3-5
3.15 Electronic Communication Systems Usage Policy.....	3-6
SECTION 4: JOB DESCRIPTIONS & SALARY PLAN	
4.1 Job Descriptions	4-1
4.2 Full Time and Part Time Status.....	4-1
4.3 Seasonal & Temporary Employees.....	4-2
4.4 Volunteers.....	4-2
4.5 Exempt Employees.....	4-2
4.6 Salary Plan.....	4-3
4.7 Pay Periods.....	4-4
4.8 Overtime Pay.....	4-4
SECTION 5: BENEFITS	
5.1 Holidays.....	5-1
5.2 Vacation.....	5-1
5.3 Sabbatical Leave.....	5-2
5.4 Sick Leave	5-2
5.5 Medical Insurance	5-3
5.6 Family Care & Medical Leave Policy	5-3
5.7 Life Insurance.....	5-3



5.8 Workers Compensation Insurance	5-3
5.9 State Unemployment Insurance, Social Security Benefits.....	5-3
5.10 Section 457 Deferred Compensation.....	5-4
5.11 Special Leave	5-4

SECTION 6: EMPLOYEE EVALUATION

6.1 Evaluation Procedure.....	6-1
6.2 Appeal.....	6-2

SECTION 7: STANDARDS OF CONDUCT

7.1 Purpose	7-1
7.2 Safety Policy	7-1
7.3 Conflict of Interest.....	7-1
7.4 Confidentiality of Records.....	7-1
7.5 Harassment Policy	7-1
7.6 Substance Abuse.....	7-3
7.7 Outside Employment.....	7-3
7.8 Proprietary Rights.....	7-3
7.9 Dress & Personal Grooming	7-4
7.10 Smoke-Free Work Environment.....	7-4
7.11 Gratuities.....	7-4

SECTION 8: DISCIPLINE

8.1 Policy & Purpose	8-1
8.2 Supervisory Responsibility.....	8-1
8.3 Applicability	8-1
8.4 Causes for Disciplinary Action.....	8-1
8.5 Forms of Disciplinary Action	8-2
8.6 Administration of Discipline.....	8-3
8.7 Informal Review	8-3

APPENDICES

Appendix A: Medical Insurance	A-1
Appendix B: Federal Family & Medical Leave Act.....	A-2
Appendix C: Life Insurance	A-3

Acknowledgment of Receipt of City of Sun Valley Manual & Policy Updates



CITY OF SUN VALLEY PERSONNEL POLICIES AND PROCEDURES MANUAL

ACKNOWLEDGMENT OF RECEIPT

I, _____ acknowledge receipt of the City of Sun Valley Personnel Policies and Procedures Manual and/or any amendments or changes to the Manual.

I understand that I have thirty (30) days to read and review the Manual and to fully understand the provisions in the Manual.

I understand that this Manual is not a contract and cannot create a contract.

I understand that I am obligated to perform my duties of employment in conformance with the provisions of the Manual and any additional rules, regulations, policies or procedures of the department in which I work whether or not I choose to read the Manual or any amendments or changes to the Manual.

Signature of Employee

Title: _____

Date: _____



SECTION 1: GENERAL POLICIES

1.1 PURPOSE

The purpose of the *Personnel Policies and Procedures Manual* is to set forth the standards, procedures, and regulations guiding employment with the City of Sun Valley. It is predicated on the belief that achievement of the City's goals and objectives rests primarily on the efforts, dedication and cooperation of the Employees. In order to maintain efficient and effective City services, it is essential that the rules and regulations governing personnel be clearly communicated and impartially administered. Where federal law or funding source regulations are in conflict with this Manual, the City shall follow such laws or regulations as applicable.

1.2 ESTABLISHMENT OF POLICIES AND PROCEDURES

The *Personnel Policies and Procedures Manual* shall be prepared and maintained by the City Administrator or his/her designee. In response to changes in applicable laws, regulations and changing conditions within the City, the City Administrator shall periodically review and recommend additions, deletions or amendments to these policies to the Mayor and Council. Amendments and revisions to the Manual shall be by resolution of the Mayor and the City Council and shall be approved prior to implementation.

The Manual, with all adopted amendments and changes, supersedes all previous policies not consistent with the provisions hereof. The Manual, however, it is not intended to be an exclusive source of rules and regulations concerning employment. Individual City departments are entitled to establish work standards and procedures necessary to implement City policy or to efficiently carry out the functions of the department, provided such standards do not diminish the benefits or protections granted to Employees by City policy.

The contents of this Manual are subject to modification at any time without notice. The City reserves the right to revise, supplement or rescind any of the provisions of the Manual as deemed appropriate. It is understood that any such modification may alter the rights and obligations of the City to its Employees. The City reserves the right to change these policies and procedures as the City deems appropriate.

1.3 EQUAL EMPLOYMENT OPPORTUNITY POLICY

The selection of all City Employees and all employment decisions, including classification, transfer, discipline and discharge will be made without regard to race, religion, gender, age, national origin. No job, or class of jobs, will be closed to any individual except where a mental or physical attribute, gender or age is a bona fide occupational qualification. It is the policy of City to comply as applicable with the Americans with Disabilities Act. All objections to application of the City's Equal Employment Opportunity Policy shall be brought to the attention of the City Administrator or in the case of objection to actions undertaken by the City Administrator to the Mayor.



1.4 AT WILL EMPLOYMENT

The Personnel Policies and Procedures Manual is not a contract. All Employees of the City are Employees "At Will" and may be terminated at any time with or without cause.

1.5 EMPLOYMENT AGREEMENTS

The City may enter into written employment agreements with any Employee. The provisions of any employment agreement shall supercede this Manual in the event of a conflict.



SECTION 2: ADMINISTRATION OF PERSONNEL POLICIES AND PROCEDURES

2.1 GENERAL ADMINISTRATION

Authority for the administration of Personnel Policies and Procedures is delegated to the City Administrator, who is responsible to and directed by the Mayor, and who is responsible for the City's day-to-day operations.

- A. It shall be the responsibility of the City Administrator to provide interpretation and advice to Department Heads and Supervisory staff concerning the application of these policies and procedures. The City Administrator shall make the final determination of questions of interpretations of these policies and the application of these policies.
- B. City Attorney: As the legal counsel for the City, the City Attorney shall provide professional legal advice and services to the City Administrator and Mayor on matters related to these policies and procedures.

2.2 DISTRIBUTION

At the time of employment, each Employee shall receive a copy of this Manual. It is the responsibility of the Employee to familiarize him or herself with the contents of the Manual and to acknowledge its receipt in writing. Periodic updates or changes shall also be acknowledged in writing.



SECTION 3: EMPLOYMENT PRACTICES

3.1 APPOINTING AUTHORITY

The appointment and discharge of the City Administrator, City Clerk, City Treasurer and City Attorney shall be made by the Mayor and approved by the majority of the City Council. All other personnel shall be appointed or discharged by the City Administrator.

3.2 ADMINISTRATION AUTHORITY

The City Administrator and City Attorney shall be directly supervised and evaluated by the Mayor. All other personnel, including the City Clerk and City Treasurer, shall be directly supervised and evaluated by the City Administrator.

3.3 PERSONNEL RECORDS

Complete and permanent records of the employment history of each current and former Employee of the City shall be maintained by the City Administrator's office. These files shall contain all documents permitted by Federal and State law. No document shall be placed in an Employee's file without his/her knowledge and receipt of a copy of same.

Personnel records are confidential documents and are only to be reviewed by those staff on a need to know basis. Such review is restricted to the Employee, the Employee's Supervisory chain, the City Administrator and the Mayor.

The City Administrator is responsible for assuring that the following information and documents are included in each Employee's Personnel File:

1. The original employment application and resume;
2. A copy of the offer letter;
3. Copies of all personnel action forms, such as change of name or address, salary and wage adjustments, promotion or demotions, separations, disciplinary actions, or records of leaves of absences;
4. Copies of performance appraisals;
5. Copies of all licenses and certificates pertinent to the job requirements;
6. The Employee's signed statement of having received, read and understood the City of Sun Valley's Personnel Policies & Procedures Manual; and
7. A copy of the Employee's background investigation and verification of references.

The City Administrator's Office will maintain separate Employee records as the Employee's Payroll Record File, which will include the following:

1. A copy of the Employee's W-2 form;
2. A copy of the Employee's Employment Eligibility Verification Form (Form I-9), required for all Employees by the U. S. Department of Justice, Immigration and Naturalization Service;



3. A copy of the Employee's PERSI application and authorization for salary deduction to provide for benefits;
4. A copy of any authorization for salary deduction for benefits;
5. Copies of the Employee's selection of benefits;
6. Time and attendance records;
7. Payroll records;
8. Wage garnishments.

The confidentiality of all individual Employee records shall be strictly enforced subject to the conditions outlined above. An Employee's Personnel File and Payroll Record File shall not be removed from the City Administrator's office except upon written approval of the City Administrator.

3.4 RECRUITMENT AND SELECTION PROCEDURES

The employment hiring process will be comprised of the following stages:

- A. Vacancies: When a vacancy occurs, a request to fill the vacant position shall be prepared by the respective Department Head and presented to the City Administrator. It shall include information pertinent to the decision of whether or not to fill the vacancy. The City Administrator shall review the budget to ensure that each vacancy is within its budgeted position allocation. The City Administrator shall also consider the availability of in-house candidates to fill the vacancy.
- B. Recruitment Process: The recruitment process will begin when a request is received and approved by the City Administrator. The City Administrator will determine whether the recruitment will proceed as an "open competitive," a "closed promotional," or an "open/promotional" opportunity. The City Administrator shall determine the recruiting sources to be used and the recruitment time period, taking into account the City's needs, recruitment strategy, and any special requirements of the position.
- C. Notice of Recruitment: Notice of all City recruitments shall be posted on the City's bulletin boards or other designated locations for a period of at least three business days. This notice shall include the deadline for filing applications.
- D. Types of Examinations:
 1. Open Competitive: This recruitment shall be open to the public. Such recruitment shall be used to fill entry level vacancies, and vacancies above the entry level where sufficient qualified applicants for promotion are not available.
 2. Closed Promotional: This recruitment shall be open only to regular and probationary Employees of the City who meet the minimum requirements as set forth in the promotional recruitment's job announcement.



3. Open and Promotional: When in the interests of the City, an external search is deemed necessary to fill a particular position, a promotional recruitment may also be open to the public.

- E. Application Process: All applications for employment shall be made on an official City application form. The form will require information covering a candidate's education, training, experience, and other information deemed pertinent and allowable by law. When the position to be filled requires special or exceptional
- F. Selection Methods: Applicants for positions shall meet the minimum qualifications of the position for which they have applied. Qualifications shall be evaluated on the basis of information provided on the application form, resume, and any supplemental documents required by the City, as well as on written and performance test scores, interview scores and background investigations.

3.5 APPOINTMENTS

When a candidate has been chosen for a position, the City Administrator shall prepare an offer letter. This letter will contain the following information:

1. The position title;
2. The effective date of hire;
3. The wage/salary which will be offered; to include any intent and purpose to adjust salary not related to merit increase;
4. The working hours;
5. Notice that the appointment is contingent upon successful completion of a physical examination, if the position is in a classification which requires such;
6. A copy of the job description; and
7. A signature block for the candidate to sign, indicating that he/she has accepted the position under the above circumstances.

A copy of the offer letter shall be kept in the Employee's permanent personnel file.

3.6 EMPLOYMENT OF RELATIVES

The City does not employ members of an Employee's immediate family, unless the City Administrator approves this arrangement.



3.7 TRANSFERS

An Employee may request a transfer from one department to another, providing the position that the Employee wishes to transfer to is in the same classification series and that the position is an equal or lower classification in the series than the classification in which the Employee is currently. In addition, the Employee must meet the minimum qualifications for the position as set forth in the classification specification documents.

The Employee shall direct his/her request to the City Administrator. The request shall then be forwarded to the appropriate Department Head. Such requests shall be given consideration when a suitable vacancy occurs and must be approved by the City Administrator.

This transfer policy is not designed to, nor does it create any contract right, express or implied, to a transfer, nor does the City's refusal to grant an Employee's request for transfer give rise to any claims against it. The City reserves the right to fill any vacancy by transfer or by other recruitment means, as deemed appropriate by the City Administrator.

3.8 RESIGNATIONS/DISMISSALS

Upon an Employee's resignation or dismissal, records pertaining to the separation of the Employee shall remain part of the Employee's permanent personnel file. The City Administrator shall ensure that separations from employment are handled in a manner that will not interrupt the orderly operation of City business.

Upon separation from employment, an Employee shall be paid for any wages/salary due and for all unused vacation time at the Employee's regular rate of pay within 48 hours of separation from service. In the event of an Employee's death, the estate of the Employee shall be paid all of the Employee's accrued salary and vacation leave.

3.9 HOURS OF WORK

The City Administrator shall determine the hours during which City office and departments shall be open to serve the public. The hours of work of individual positions may be proposed by the respective Department Head and approved by the City Administrator in order to serve the needs of the City.

The work schedule will normally provide for a work week of forty (40) hours within a seven-day period, from 8:00 a.m. to 5:00 p.m., including a lunch period. Other work schedules may be established by the City Administrator in order to meet the needs of specific City services.

3.10 ATTENDANCE AND PUNCTUALITY

Employees are expected to be at work on their normally scheduled workdays, unless they have received approval for an absence from their immediate Supervisor. An Employee who is absent from work for three (3) consecutive working days, without Supervisory authorization or a statement of justification from an attending physician, will be considered to have abandoned



his/her job as of the last day of active employment, and will be declared to have voluntarily quit, unless the City subsequently determines that the absence was due to circumstances beyond the Employee's control. Because of overtime requirements, non-exempt positions should not begin work before their assigned time nor leave work later than their assigned ending time without the prior approval of their Supervisor.

Non-exempt Employees who are more than ten (10) minutes late to their assigned place of work are considered tardy. An Employee who regularly fails to arrive at work on time without a legitimate reason or who does not notify his/her Supervisor is subject to disciplinary action. The Supervisor shall determine whether the reason given is legitimate. Employees who cease and/or leave work before the end of their assigned work day shall also be subject to disciplinary action.

3.11 WORK SCHEDULES

The City Administrator will work with the Department Heads to establish normal work schedules. The City retains the right to alter work schedules in order to best meet the needs of the organization and of the public.

3.12 RESIDENT REQUIREMENTS

The Fire Chief, Assistant Fire Chief and Street Superintendent are required to reside within the incorporated limits of Sun Valley or Ketchum. The City may on an annual basis provide a housing allowance or suitable housing to aid in the additional costs of nearby residency. In addition, emergency services departments may adopt restrictions on travel time and distance requirements for Employees or volunteers in order to accomplish Employee response during emergencies.

3.13 CITY VEHICLES

Drivers of City-owned vehicles or drivers of private vehicles while on City business shall obey all traffic and speed laws. The use of seat belts is required at all times. Controlled substances shall never be carried in a City vehicle or a private vehicle on City business, with the exception of evidence by law enforcement officials.

City-owned vehicles shall never be used for private purposes. When Employees are required to travel outside the City while on City business, Employees should use a City vehicle unless use of a private vehicle is approved by the Supervisor.

The Fire Chief is provided City-owned vehicles which may be taken home and used during any work period for travel within or out of the City. In the absence of the Fire Chief, the Assistant Fire Chief may use the City-owned vehicle during any work period for travel within or out of the City.

3.14 TRAVEL EXPENSES REIMBURSEMENT

Reimbursement for expenses incurred when an Employee is traveling on City business shall be



according to the following:

1. Prior to traveling outside the County, the Employee shall make written application and obtain approval from the Supervisor for the trip. Travel requests shall include an estimate of the costs involved.
2. Requests for reimbursement of expenses shall be submitted on a travel expenses form. All expenditure receipts shall be submitted when a request for reimbursement is made.
3. The City Administrator will set maximum per diem allowances for meals.
4. If an Employee is authorized to use his/her private vehicle for City business, mileage shall be paid at the rate set by the Federal tax reimbursement rate.

3.15 ELECTRONIC COMMUNICATION SYSTEMS USAGE POLICY

A. **PURPOSE:** The availability of electronic communication systems within the work environment provides many opportunities for enhancement of productivity and effectiveness. These systems also entail the opportunity for rapid transfer and broad dissemination of sensitive material that can have damaging effects on the City of Sun Valley, its employees, and the public, if not managed properly. It is important, therefore, that the City of Sun Valley establish a policy which provides direction to City employees regarding the purchase, lease, license and use of electronic communication systems.

B. **ADMINISTRATION:** The City Administrator or her/his designee shall be responsible for the implementation of the Electronic Communication System Usage Policy.

C. DEFINITIONS:

1. Electronic Communications System includes cell phones, PDA's, hardware, software, webpage, computers, electronic mail systems (email), voice mail systems, paging systems, electronic bulletin boards, Internet services, fax machines, mobile digital terminals (MDT), and any part of the City of Sun Valley leased or acquired network system(s) of any sort.
2. Computer - A programmable electronic device that can store, retrieve, and process data, including any computer issued or maintained by the City of Sun Valley, including but not limited to both laptop and desktop versions, or any computer which is attached to or a part of the City of Sun Valley computer network.
3. Hardware - The physical components of a computer, including the monitor, keyboard, central processing unit, floppy drives, CD-ROM drives, external storage media, and all peripheral accessories, including but not limited to, network connections, printers, scanners, speakers, printer cables and mouse.



4. License - To permit or authorize the use of.
5. Network System - The hardware and software which provides for the interconnection of City computers.
6. Programming - A sequence of coded instructions that can be inserted into a mechanism (such as a computer) to work out a series of instructions.
7. Shareware - Computer software that can be used and copied without charge. However, shareware is copyrighted and, if the copyright holder requests, a donation or fee must be paid if the software is used regularly.
8. Software - The entire set of programs, procedures and related documentation associated with a computer system/program.

D. PURCHASES, COPYRIGHT AND LICENSES

1. The purchase, lease, or license of all electronic communication system hardware and software must be approved by the City Administrator or her/his designee.
2. Copying of computer software owned by the City of Sun Valley shall be governed by the copyright agreement..
3. License agreements will be maintained by the City Administrator or her/his designee. The license agreement shall be the ultimate rule governing the use of the software. Any act permitted by this policy, but not permitted by the license agreement of the software program, shall be considered null and void.
4. Software registration must be completed for all software purchased by the City at the time of purchase and shall list the City of Sun Valley as the purchaser and list the City Administrator as the contact for inquiries as to the use of the product.

E. GENERAL REQUIREMENTS

1. The electronic communication system is to be used for City business purposes only.
2. Incidental personal use of the Internet is allowed from time-to-time during breaks, including the lunch hour, to check for email on a personal, non-City account(s).
3. All messages composed, sent, stored, copied or received via electronic communication systems are the property of the City. These messages are not private property of any employee, and no employee should have any



expectations of privacy in such messages. The City Administrator has the right to access, close and/or disclose all messages sent via an electronic communications system. Employees, therefore, should treat electronic communications with the same degree of propriety and professionalism as official correspondence.

4. The City Administrator shall regulate the requirements for City password usage. All employees shall change, alter, or modify their passwords as required by the City Administrator.
5. Confidential electronic files must be professionally erased or storage devices containing these files removed from any computer or hardware device prior to the computer or hardware device being removed from the agency for servicing, repairs, or replacement.
6. The City Administrator must be notified immediately when --
 - a. Sensitive information is or suspected of being lost or disclosed to unauthorized parties.
 - b. Unauthorized use of the electronic communications system has taken place, or is suspected of taking place.
 - c. Passwords are lost, stolen, or disclosed, or are suspected of being lost, stolen, or disclosed.
 - d. Any unusual system behavior such as missing files, frequent system crashes, misrouted messages, and the like appear because it may indicate a computer virus infection or similar security problem.
7. It is the intent of the City to provide the tools that every employee needs to successfully complete assignments. Occasionally an employee is allowed to use his or her personal computer for City business subject to prior department head approval and the following conditions:
 - a. Any personal computer used for City business will be regulated by this policy as if it were a City purchased computer.
 - b. All document files, emails, and any other type of file created on a personally-owned computer that is being used for City business is subject to the Public Records Law, and the employee who owns the computer must make the computer and its contents available for inspection in accordance with that law at any time it is requested.
8. The City Administrator shall define the network server uses, organizational format, use of older/file protection, storage and other aspects of network capabilities. Employees have the responsibility to use the network server effectively in meeting these directions.



9. Electronic communications are subject to the provisions of Resolution 2006-05 – Records Retention.
10. An employee may indicate her/his affiliation with the City of Sun Valley in bulletin board discussions, chat sessions, and other offerings on the Internet. This may be done by explicitly adding certain words, or it may be implied. In such cases where the employee states her/his affiliation with the City, she/he must also clearly indicate the opinions expressed are her/his own and not necessarily those of the City of Sun Valley.
11. The use of electronic communication systems shall be in keeping with applicable Federal, State, local, civil and criminal laws.

F. UNAUTHORIZED ACTIVITIES

1. No personally owned software applications or shareware software may be installed on a City computer, including, but not limited to, games, entertainment software, and screen savers unless written permission is given by the City Administrator and it is allowed by the licensing agreement of the software.
2. No employee may tamper with, change, delete, reprogram, copy protected codes, enter into areas of the program reserved for programming, insert additional programming, or rename any computer software program purchased, leased, or licensed for use by the agency, unless it is authorized by the licensing agreement. No employee shall perform any repairs, installations, modifications, removal, or relocation of any computer hardware, peripherals, and associated components without first obtaining authorization by the City Administrator.
3. Electronic transfer of files, software, or programs purchased by the City is not authorized unless it is allowed by the licensing agreement of the software product.
4. Employees shall not use the email account or password assigned to another individual to send or receive messages unless authorized to do so by the owner of the email account.
5. The electronic communication system shall not be used to solicit or proselytize for commercial ventures, religious or political causes, outside organizations, or other non job-related solicitations, or used for any personal commerce or purchases.
6. The electronic communication system shall not be used to send (upload) or receive (download) copyrighted materials, trade secrets, or proprietary information. Failure to observe copyright or license agreements may result in disciplinary action and/or legal action by the copyright owner.



7. No employee shall utilize or cause any City-owned computer to utilize an automatic log-on. Employees are prohibited from leaving a City computer unattended while logged on.
8. The encryption of files and the use of encryption programs are not permitted on any City computer without the prior authorization of the City Administrator.
9. No employee shall bypass or modify any installed security systems or menu interfaces without the expressed permission of the City Administrator.
10. No employee shall knowingly introduce any computer virus into any part of the electronic communications system operated by the City. Employees must use due care and caution to avoid inadvertently introducing computer viruses into any City computer by any means. Any material received which is suspect, e.g. multiple copies of email with the same subject line information received in rapid succession, should not be opened.
11. Viewing, downloading, communicating and/or transmitting material (for other than law enforcement purposes) that is known to involve the use of obscene language, images, jokes, sexually explicit materials or messages that disparage any person, group, or classification of individuals is strictly prohibited. Any employee who uses the City's equipment or network for these purposes will be subject to an immediate, severe disciplinary response.
12. Employees shall not use photographs or other material depicting City logos, vehicles, etc. on any personal or privately-owned home page. Personal/private home pages shall be clearly identifiable as personal pages.
13. Electronic communication systems are for the exclusive and sole use of City employee and shall not be used at any time by family members, friends or other persons not employed by the City.



SECTION 4: JOB DESCRIPTIONS & SALARY PLAN

4.1 JOB DESCRIPTIONS

All Employee positions in the City will have a job description which will include but is not limited to the position title, statement of duties, required skills, knowledge and abilities, education and experience requirements. The job description will be developed by the Department Head and approved by the City Administrator. A review of each job description shall be conducted periodically by the City Administrator. The City Administrator may from time to time abolish certain job positions based upon the needs of the City.

4.2 FULL-TIME AND PART-TIME STATUS

The status of the position held with the City may affect the status of obligations or benefits associated with City employment. The procedures for hiring, promotion and transfer of full-time Employees shall be subject to the provisions of this Manual. Personnel actions concerning part-time or casual Employees are not subject to guidelines set forth herein unless the Manual's provisions expressly provide therefore. The primary groups of Employees and their respective status is outlined as follows:

A. FULL TIME REGULAR EMPLOYEES

1. Employees whose typical work schedule calls for at least 30 hours of scheduled work during a seven (7) calendar day period. Full-time regular Employees shall receive all Employee benefits provided by the City as such benefits now exist or may be subsequently changed.
2. Police Officer Idaho Post Certification: Any police officer obtaining an Idaho post certification shall be eligible for a regular employment status.
3. The Police Department has selected a full time employment scheduling period of fourteen (14) days as allowed by FLSA. This scheduling may be changed by the Police Chief with the approval of the City Administrator.

B. PART TIME REGULAR EMPLOYEES

1. Employees whose typical work schedule calls for at least twenty (20) hours, but not as much as thirty (30) hours, of scheduled work during a seven (7) calendar day period. Part-time regular Employees shall receive reduced Employee benefits in accordance with policies adopted by the Council. The scope of benefits received may vary proportionately with the number of hours typically scheduled for a part-time regular Employee. The number of hours scheduled may also affect the Employee's obligation to participate in certain mandatory state benefit programs. Certain benefits may not be available.



4.3 SEASONAL & TEMPORARY EMPLOYEES

This Section sets forth policies governing the City's use of temporary and seasonal Employees, and volunteers. Except as specifically provided within this Section, volunteers and seasonal Employees do not have any rights as regular full or part-time Employees.

- A. Seasonal and Temporary Employees may be employed on an as-needed basis by the City, not to exceed 1,000 hours per fiscal year (October 1 through September 30). Within budgetary constraints, the City Administrator will have the authority to appoint temporary and seasonal Employees.
- B. The City Administrator will determine the appropriate hourly rate of pay and benefits, if any. All Seasonal and Temporary Employees will be retained with a written Letter of Employment.

4.4 VOLUNTEERS

Volunteers may be utilized by the City in any capacity that is deemed suitable by the City Administrator. The number of volunteers being utilized by the City at any one time may vary by programmatic needs and the availability of volunteers available with specialized skills or abilities which may be needed.

Upon the initiation of the volunteer relationship, the volunteer shall sign a "Volunteer Waiver Form." Volunteers shall submit a monthly log detailing the number of hours contributed to the City. The City will utilize volunteers to provide fire suppression services.

The City shall provide coverage for all volunteers under the State workers' compensation system as required by law. The City Administrator will determine the amount of hourly pay and conditions for such pay and/or benefits, if any.

4.5 EXEMPT EMPLOYEES

The City Administrator is authorized to evaluate each job position as necessary to determine whether it shall be "exempt" from certain work provisions as defined in the Fair Labor Standards Act (FLSA). The following positions have been determined to be "exempt": City Administrator, Police Chief, Fire Chief, Assistant Fire Chief, Director of Community Development, Street Superintendent, City Clerk, Finance Manager/City Treasurer and the Building Official.



4.6 SALARY PLAN

A. POLICY

The City's policy is to recognize and compensate Employees for work performed within and beyond the normal work period. Accordingly, the City will maintain a Salary Plan.

The Salary Plan shall include all job positions in the City except the City Administrator and City Attorney and shall set forth salary ranges for those positions. The City Administrator shall have the responsibility to develop and maintain the Salary Plan. The Salary Plan will establish minimum and maximum salaries for each job position, with the exception of the City Administrator and City Attorney. The Salary Plan will be presented to the Mayor and City Council for adoption. Every third year, commencing in April 2010, the City Administrator will update the Salary Plan for regional market changes to ensure job positions are competitive. (Amended by Resolution 2007-06)

B. SALARY PLAN ADMINISTRATION

The Salary Plan shall be implemented and administered by the City Administrator who shall determine the rate of pay for each Employee. Movement in the Salary Plan is not automatic. The City Administrator reserves the right to change Employee salaries for any reason deemed appropriate including but not limited to job performance and the availability of City funds.

In order to properly compensate Employees, salary determinations shall be based upon the following:

1. New Employees: The job qualifications, experience and education of the new Employee will be evaluated in determining a new Employee's starting salary within the Salary Plan.
2. Merit Increases: In order to properly compensate Employees, adjustments in salary shall be based on a merit pay system. Adjustments will not be automatic, but shall depend upon achieving an "above standard" rating or "outstanding" rating on an annual performance evaluation or a six month probationary performance evaluation. Salary adjustments for those Employees achieving a rating worthy of merit increase consideration shall fall within the salary plan range for that position, unless approved otherwise by the City Administrator.
3. Employee Changes In Status:
 - a. Promotions: An Employee who is promoted to a higher classification shall be placed in the higher salary range and will receive an increase not to exceed the maximum rate in the new range. When promoted, an Employee will retain his/her original



hire date for purposes of calculating annual benefits, but the date of promotion will be used for purposes of performance evaluations and merit consideration.

- b. Voluntary Demotion: An Employee who voluntarily is demoted shall be placed in the new job position salary range, at a step as close as possible to his/her previous step and range. However, his/her salary shall not exceed the maximum rate for the new, lower salary range.
- c. Involuntary Demotion: An Employee who is involuntarily demoted as a result of disciplinary action may be placed in a new job position range and his/her salary reduced.
- d. Transfers: An Employee who transfers laterally to a classification with the same salary range shall retain his/her present salary placement.
- e. Employees who have reached Step 9 of their position's Salary Plan: Upon receiving an excellent performance evaluation, an employee who as reached Step 9 of their position's Salary Plan may be eligible for a 2.5% pay increase.

4.7 PAY PERIODS

The City operates on a biweekly pay period which shall commence on Monday and continue through the following second Sunday (two weeks). Employees shall receive pay for the prior two week pay period by 5 p.m. the following Thursday. If the Thursday is a holiday, the pay date will be the first business day preceding the holiday. The manner of distribution of paychecks will be determined by the City Administrator.

4.8 OVERTIME PAY

A. OVERTIME PAY FOR NON-EXEMPT EMPLOYEES

The Fair Labor Standards Act (FLSA) stipulates that overtime compensation shall be paid to non-exempt Employees. All overtime must be authorized by the Supervisor in advance. Overtime pay will be administered as follows:

1. The Police Department work period shall be fourteen (14) days as allowed under FLSA. Overtime for nonexempt Employees will begin to accrue after eighty hour of work within the work period. Overtime will be compensated at a rate of pay equal to one and one-half times the Employee's regular hourly rate of pay.
2. All other nonexempt Employees shall be entitled to overtime pay for work performed in excess of forty (40) hours per week. Overtime will be compensated at a rate of pay equal to one and one-half times the Employee's regular hourly rate of pay.



3. The Employee may request to be granted compensatory time off without pay in lieu of receiving overtime pay consistent with the applicable FLSA regulations. This request must be made each time overtime hours are worked. The request should be directed to the Department Head, who may grant the request if time off would not pose a disruption of operations and the delivery of services. Compensatory time off will be at the rate of one and one-half hours off for each hour of overtime worked.
4. Compensatory time accrual will not exceed 40 hours for any Employee.

B. EXEMPT EMPLOYEE OVERTIME

It is anticipated that exempt Employees will work more than 2080 hours per year. Exempt Employees are expected to manage workloads to meet the high quality service needs of the City, including the supervision of staff, and may have variations in the hours worked from week to week to do so. Exempt Employees are not eligible for overtime compensation.



SECTION 5: BENEFITS

5.1 HOLIDAYS

The following eleven (11) holidays are observed: employee's birthday or anniversary, Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving, Christmas Day, and New Year's Day.

Holidays which fall on a Saturday are taken on Friday; those which fall on a Sunday are taken on a Monday.

Police Officers are scheduled into eighty (80) hour rotations either for work or for a day off over fifty-two (52) weeks. Officers who have a regular scheduled day off on a holiday shall be provided eight hours of compensatory time off. Officers who are scheduled to work on a holiday will be compensated with one (1) hour of compensatory time off for each hour worked on the holiday.

Any other Employee who is called into work during a designated holiday, in addition to being paid for the holiday, shall be paid time and one-half for each hour worked on the holiday. Compensation shall be either cash or compensatory time off, at the discretion of the Department Head.

5.2 VACATION LEAVE

- A. The purpose of vacation leave is to allow the Employee extended rest and rejuvenation. Regular full-time Employees shall be provided annual vacation leave according to the following schedule:

<u>Years of Employment</u>	<u>Vacation Days</u>
Year 1	10
Years 2-7	15
Years 8+	20

- B. Regular part-time Employees shall be provided vacation leave according to the above formula in proportion to hours actually worked in a typical 40 hour work week.
- C. The following provisions apply to vacation leave:
1. Employees are required to take a minimum of 80 hours of vacation per year, unless approved otherwise by the Employee's Supervisor. Employees may begin taking accrued vacation time after six (6) months of employment.
 2. Employees may accrue a maximum of one hundred (100) hours of vacation. When the Employee has accrued one hundred (100) hours of vacation leave,



the Employee will cease accruing vacation leave until his/her accrual balance falls below one hundred (100) hours. (Amended by Resolution 2007.06)

3. Vacation Leave Conversion: With the approval of the Employee's Supervisor and the City Administrator, up to forty (40) hours of vacation leave may be converted to cash payment at the Employee's straight time rate each calendar year only if the Employee has used an equal amount of vacation leave in the previous 12 month period; for administrative purposes, no more than two (2) requests for conversion during the calendar year will be allowed, and any hours of vacation leave counted in the first request for that year may not be counted in the second.
4. Paid holidays which occur during vacation leave will not be charged to vacation time.
5. Vacation must be scheduled and approved in advance with the respective Department Head, in order to ensure continued operation of City services.

5.3 SABBATICAL LEAVE

- A. The purpose of the sabbatical is to allow the Employee extended paid time off from work to pursue a personal or professional interest, including rest and relaxation.
- B. Employees will be entitled to fifteen (15) days of paid sabbatical leave after completion of the first three years of employment and every four (4) years of employment thereafter. The following provisions apply to sabbatical leave:
 1. The fifteen (15) days leave must be taken in the first year following each three year anniversary date or be forfeited, i.e., years 4, 8, 12, etc.
 2. There is no conversion of the sabbatical leave to cash payment at anytime including upon leaving the employment of the City prior to or during a sabbatical year. The sabbatical leave may be combined with other additional accrued vacation, if approved by the Supervisor. The sabbatical leave dates must be scheduled in consultation and with the approval of the Supervisor. It is expected that the fifteen (15) days of sabbatical leave will be taken as a single block of time off.

5.4 SICK LEAVE

Sick leave shall be a benefit to all regular full-time Employees as an assurance against a loss of income during the Employee's illness, injury, or disability when the Employee is unable to fulfill his/her job duties. Employees may also take sick leave to care for a member of the immediate family, including children, spouses and parents. Sick leave shall accrue at the rate of one day per month.



Sick Leave Accrual: Employees may accrue a maximum of 720 hours of sick leave. Sick time accruals are forfeited at the time of employment termination and there is no cash equivalent payment provided by the City.

Physician's Statement: The City may request a Physician's Statement for absences of more than three (3) days.

Duplication of benefits: Sick leave benefits are not to be drawn during such time as the Employee is drawing unemployment, workers' compensation, disability insurance, or any other similar benefits or payments, either from the City or from any other source except for personal, non-City related insurance benefits.

5.5 MEDICAL INSURANCE

The City provides to each Employee and his/her dependents a medical health insurance policy, which includes but is not limited to health and dental insurance. Due to the changing nature of medical insurance and the associated premiums, the current Medical Insurance Plan of the City will be on file with the Finance Manager/City Treasurer. Appendix A summarizes the current benefits and will be updated and attached to this Manual whenever changes in coverage or benefit are approved by the Mayor and City Council.

5.6 FAMILY CARE AND MEDICAL LEAVE POLICY

To the extent not already provided for under current leave policies and provisions, the City will provide family and medical care leave for eligible Employees as required by federal and state law. Appendix B sets forth certain rights and obligations with respect to the Federal Family and Medical Leave Act of 1993 (FMLA).

5.7 LIFE INSURANCE

The City may provide each Employee a Life Insurance Policy. Appendix C summarizes any current benefit. The Appendix will be updated and attached to this Manual whenever changes in coverage or benefit are approved by the Mayor and City Council.

5.8 WORKERS' COMPENSATION INSURANCE

All Employees are covered by workers' compensation insurance in accordance with state and federal law. An Employee who suffers a work related illness or injury should check with the City Administrator's office for further information.

5.9 STATE UNEMPLOYMENT INSURANCE, SOCIAL SECURITY BENEFITS AND PERSI

All Employees of the City are covered by these benefits in accordance with state and federal law. In addition, all regular Employees are covered by the Public Employees' Retirement System of Idaho (PERSI). Contributions are made by both the City and the Employee.



5.10 SECTION 457 DEFERRED COMPENSATION

All regular full-time Employees and regular part-time Employees who work more than thirty (30) hours per week are eligible to participate in the City's optional deferred compensation plan. This plan, governed by IRS (Section 457) and state law, provides for the Employee to defer a portion of his/her income before taxes through payroll deduction, and provides for a variety of investment options.

5.11 SPECIAL LEAVE

A. PROFESSIONAL DEVELOPMENT AND EDUCATIONAL

The City encourages and supports the continuing education and training of Employees. Job related training or education shall be approved in advance by the Employee's direct Supervisor, in consultation with the City Administrator, and shall include tuition, materials, and books. It shall be reimbursed to the Employee upon evidence of a passing grade. The approval of educational reimbursement is not automatic; it is a discretionary benefit. The intent of the educational reimbursement policy is to cover the cost of individual classes only, on an infrequent basis. This policy is not intended to cover the costs associated with the pursuit of associate, undergraduate, graduate, or professional degree programs. Educational reimbursement, per this section, is academic in nature and is distinct from job related training, workshops, seminars, classes and/or conferences.

B. MILITARY LEAVE

An Employee who is a member of the National Guard, or is in a reserve component of the Armed Forces of the United States, or of the Public Health Services, shall be entitled to a leave of absence from City service for a period not exceeding 15 calendar days in any one (1) calendar year period. Such leave shall be granted without loss of time, pay, or other benefits to which the Employee is entitled. When an Employee receives bona fide orders to temporary active or training duty, such military leave longer than 15 days in any calendar year shall be granted without City pay.

C. BEREAVEMENT LEAVE

Bereavement leave of three (3) days is authorized in case of a death in the immediate family. Immediate family is defined as spouse, child, parent, parent-in-law, brother or sister.

D. COURT APPEARANCE

Any Employee required to appear in court or before the Grand Jury as a juror, witness in a criminal case, or witness in a civil case for the purpose of giving testimony shall



receive full compensation as though he were actually on the job during such time. He/she shall claim any witness or other fee to which he/she may be entitled by reason of such appearance and pay the same over to the City Treasurer to be deposited in the general fund.

E. LEAVE OF ABSENCE WITHOUT PAY

City Employees may apply for a leave of absence without pay for illnesses not otherwise covered by the City's family/medical leave policy, emergencies, or other compelling reasons. The City Administrator will review the request and determine whether to approve the leave. All applicable leave balances (i.e., sick, vacation, compensatory) must be exhausted before the leave without pay begins.

1. Reinstatements: Except for a leave of absence without pay of less than 90 days duration, the Employee's position will not be held open. For leaves beyond 90 days duration, the Employee must apply for reinstatement and will then be reinstated into the first available position of a similar classification and pay as the position vacated.
2. Benefit accruals: No vacation, sick leave, retirement, or other benefits will be paid or accrued during periods of leave without pay.



SECTION 6: EMPLOYEE EVALUATION

6.1 EVALUATION PROCEDURES

A. STANDARD PROCEDURES

Full-time Employees shall receive a job performance evaluation at six months service and thirty (30) days prior to one year of service. Thereafter, performance evaluations shall be conducted annually at the Employee's anniversary date. With the approval of the City Administrator, the dates of performance evaluations may be extended when 1) the Employee's performance needs improvement, and the Supervisor, with the concurrence of the City Administrator, determines that it is in the best interest of the City and the Employee to grant an extension to allow for improvement; 2) the Employee is on a leave of absence without pay for more than 30 days; and 3) when circumstances indicate that the Employee has not had adequate time to demonstrate suitability for regular status or continued employment.

Each Employee will be evaluated to assess the performance of that Employee in the job being performed for the City. Each evaluation will be given on the basis of the direct Supervisor's observations of the Employee's performance, the accuracy of the Employee's work in addition to the quantity and quality of the work. Each Supervisor will seek the input of other City personnel and input, where appropriate, from others outside of the City workforce who have an on-going knowledge of the Employee's work.

1. The City Administrator shall provide to each Supervisor an appropriate Employee Appraisal Form.
2. The Supervisor shall perform the following:
 - a. Review the Employee's job description;
 - b. Review Employee's Goals from the previous appraisal period.
 - c. Complete the Employee Performance Appraisal Form
3. The Employee will also complete a self-evaluation on the Employee Performance Appraisal Form.

B. EVALUATION

Each evaluation shall conclude with a meeting between the evaluated Employee and the immediate Supervisor in which the Employee will be provided with the written evaluation prepared by the Supervisor. The Employee will be given an opportunity to respond to the evaluation. The Supervisor will establish performance goals for the Employee for the next year and detail any work improvements or continuing professional development needs of the Employee.



6.2 APPEAL

Any Employee shall have the right to appeal his/her performance evaluation to the City Administrator by submitting his/her concerns in writing. The City Administrator shall meet with the Employee to discuss the Employee's concerns. The City Administrator shall issue a written finding, either upholding the Employee's performance evaluation, or returning it to the Supervisor for changes or revision. Any written materials from this process shall become part of the Employee's personnel file. The City Administrator's written finding shall be final and there shall be no further right of appeal.



SECTION 7: STANDARDS OF CONDUCT

7.1 PURPOSE

This policy shall assure that all Employees are aware of important policies, procedures and regulations governing their employment with the City. In addition, the City expects that this policy shall ensure that Employees at all times conduct themselves in a manner that reflects favorably on the City and builds and supports the integrity and credibility of the City organization. Violation of any of the policies included in this Section may be grounds for disciplinary action, up to and including termination of employment, depending upon the severity of the violation.

7.2 SAFETY POLICY

Safety and health is the primary concern and responsibility of every Employee working for the City. The City recognizes its obligation to provide adequate safety equipment, to train Employees in safe operations and practices, and to establish and enforce safety regulations.

All Employees are obligated to perform their assigned duties safely by following established safe work procedures, using the proper safety equipment, and by reporting or correcting unsafe acts or workplace conditions.

7.3 CONFLICT OF INTEREST

City Employees are expressly prohibited from engaging in any activities which could represent a conflict of interest with their City employment.

It is the responsibility of the Employee to notify his/her Department Head when the Employee's circumstances or work assignment change and create a situation wherein a conflict of interest may arise. The Department Head will notify the City Administrator in writing of the potential conflict. The City Administrator, in consultation with the City Attorney, shall make recommendation to the Mayor and Council as to what action should be taken to avoid the potential conflict of interest.

7.4 CONFIDENTIALITY OF RECORDS

Employees having access to confidential records such as personnel actions, medical records, payroll records, etc., shall maintain strict confidentiality of such records. City records may only be released or disseminated by the Mayor, City Administrator or City Clerk in accordance with the public records laws of the State of Idaho.

7.5 HARASSMENT POLICY

The purpose of this policy is to set forth the City's position prohibiting harassment by or against any of its Employees or applicants. The City's harassment policy is in keeping with the City's commitment to provide a work environment that is free of discrimination. The City prohibits



harassment in any form, including verbal, physical and visual harassment.

- A. Sexual harassment includes, but is not limited to, making unsolicited and unwelcome sexual advances, requests for sexual favors and/or other verbal, physical, or visual conduct of a sexual nature which occurs under the following circumstances:
 - 1. Submission to such conduct is explicitly or implicitly made a term or condition of employment; or
 - 2. Submission to or rejection of such conduct is used as the basis for employment decisions affecting the Employee or applicant; or
 - 3. Such conduct has the purpose or effect of substantially interfering with the individual's performance and/or creating an intimidating, hostile or offensive work environment.
- B. Racial or ethnic harassment includes, but is not limited to, ethnic slurs, jokes or other verbal or physical conduct relating to an individual's race, national origin, or ancestry where such conduct:
 - 1. Has the purpose or effect of creating an intimidating, hostile, or offensive working environment; or
 - 2. Has the purpose or effect of unreasonably interfering with an individual's work performance; or
 - 3. Otherwise adversely affects an individual's employment opportunities.
- C. Also similarly prohibited is any form of harassment against a person because of that person's religious creed, physical handicap, medical condition, sexual orientation, marital status or age.

Guidelines:

- A. An Employee who believes that he or she has been harassed by a co-worker, Supervisor, any City official, or individual outside of the City organization, should immediately notify his/her Department Head of the facts of the incident or incidents and the name(s) of the individual(s) involved.
- B. If the complaint is against the Employee's Department Head, the Employee should report it directly to the City Administrator. If the complaint is against the City Administrator, or a member of the City Council, the Employee should report the complaint to the Mayor. If the complaint is against the Mayor, the Employee should report it to the President of the Council.
- C. A Supervisor or Department Head who is notified of a complaint or otherwise becomes aware of a violation of this policy must immediately notify the City Administrator. Failure to do so may result in disciplinary action up to and including termination.
- D. Once an incident has been brought to the attention of management, an investigation will be conducted by the City Administrator's office or other person designated by the City Administrator or the City Council to determine all the facts surrounding the



incident including, but not limited to, the totality of the circumstances, the nature of the conduct, and the context in which the alleged incident occurred. The City has the right to retain an independent third party to conduct the investigation.

- E. If the complaint is against a patron of City services, the City will take those steps within its power to investigate and eliminate the problem.
- F. If a violation of this policy is found to have occurred, the Employee who is found to have violated this policy will be subject to discipline, up to and including termination.
- G. Retaliation: Retaliation against a person for filing a harassment charge or making a harassment complaint is prohibited. Employees found to be retaliating against another Employee shall be subject to disciplinary action, up to and including termination.

7.6 SUBSTANCE ABUSE

The City maintains a "zero-tolerance" policy toward the use or possession of illegal substances and toward an Employee being impaired or incapacitated by alcohol or any other controlled substance.

The unauthorized possession, consumption, transfer or sale of any illegal drug shall be grounds for immediate disciplinary action.

An Employee may not, under any circumstances, report to work impaired by or under the influence of alcohol or any illegal or controlled substance. Any Employee who does report to work under the influence of alcohol or any illegal or controlled drug will be relieved of duty and subject to disciplinary action.

7.7 OUTSIDE EMPLOYMENT

The City Administrator shall have the authority to limit outside employment activities of City Employees when in his/her judgment that employment would create a potential conflict of interest, a potential breach of confidentiality on substantive matters of City business, or would have the potential to detrimentally affect the Employee's ability to perform for the City. Prior to engaging in outside employment, City Employees must submit a written request to the City Administrator who shall approve or deny the request within five working days.

7.8 PROPRIETARY RIGHTS

Any and all work products including software design, reports, and research analysis completed by City Employees while in the employ of the City are deemed to be the property of the City. No Employee may sell, copy, or otherwise use such information for outside economic gain without the express written consent of the City.



7.9 DRESS AND PERSONAL GROOMING

Employees shall at all times dress in a manner which reflects a professional image of the City. Clothing should reflect commonly accepted office standards and Employees should be well groomed at all times. Items including, but not limited to: halter tops, "spaghetti straps," extremely short shorts, spandex shorts, or worn or soiled jeans are neither appropriate nor acceptable during working hours. Employees in violation of this policy will be required to leave the premises and return in appropriate attire, and time taken to comply with this requirement will be at the Employee's own expense.

7.10 SMOKE-FREE WORK ENVIRONMENT

It is the policy of the City to create and maintain a safe and healthful work environment. Therefore, the City is a smoke-free workplace. Consistent with this policy, all City buildings and vehicles are designated no-smoking areas. Employees desiring to smoke may do so in offsite locations during their normal lunch or break periods.

7.11 GRATUITIES

No Employee shall accept any fee, gift, or other valuable item in the course of performing the duties of his/her position. Employees may accept such items as candy, cake, cookies, or other items of nominal value which are intended to be appreciative in nature and which are made available for general office consumption or use. Meal expenses related to the conduct of City business are exempt from this policy if approved in advance by the Department Head.



SECTION 8: DISCIPLINE

8.1 POLICY AND PURPOSE

The purpose of this policy is to establish a disciplinary system to assure a fair and consistent procedure for the prevention and correction of Employee performance deficiencies. It is the policy of the City to promote a positive discipline process wherein the objective is to assist the Employee to succeed in his/her responsibilities whenever possible.

8.2 SUPERVISORY RESPONSIBILITY

It is the responsibility of each Supervisor to identify, evaluate, and institute measures to correct performance deficiencies. Supervisors are expected to utilize the following strategies:

1. Communicate and explain the City's expectations and performance standards.
2. Communicate and explain the City's disciplinary policies.
3. Provide Employee training, recognition, and feedback on performance standards.
4. Conduct periodic performance reviews and appraisals.

8.3 APPLICABILITY

This policy shall apply to all regular full-time and regular part-time Employees. It shall not apply to the City Administrator, City Clerk, City Treasurer, City Attorney, or any seasonal or temporary Employees, paid call firefighters or volunteers.

8.4 CAUSES FOR DISCIPLINARY ACTION

Any action or inaction which is a hindrance to the effective performance of City operations, or reflects discredit upon the City or its Employees, will be considered just cause for disciplinary action. Disciplinary action may be taken for (but is not limited to) the following actions:

1. Violation of any City policy, rule, or regulation, contained in these Personnel Policies or in any other City communication of general distribution.
2. Violation of the Drug-Free Workplace Policy.
3. Violation of lawful duty.
4. Insubordination, including refusal to obey a reasonable order and promoting work unit insubordination.
5. Absence from the workplace without prior authorization (unexcused or excessive absenteeism).
6. Habitual tardiness or absences.
7. Abuse of sick leave benefits.
8. Failure to perform assigned work in an efficient and acceptable manner.
9. Abusive language or conduct toward the public or fellow Employees, or other conduct unbecoming a City Employee, including disrespect toward Supervisory or other authority, disorderly conduct, disregard or neglect of duties, abuse of



- authority over other Employees, or on or off-duty conduct which may bring discredit to the City.
10. Being wasteful of City materials, property, or time.
 11. Unacceptable interpersonal skills, to the extent that the workplace environment is below standard.
 12. Conviction of a work related felony.
 13. Use of religious, political, or fraternal influence for personal gain.
 14. Theft.
 15. Personal acceptance of a fee, gift, or other valuable item in the course of the employee's work for the City.
 16. Release of confidential information.
 17. Falsification of forms, records, or reports, including but not limited to time cards or job applications.
 18. Participating in unlawful harassment toward any member of the City staff or the public, including but not limited to sexual or racial harassment.
 19. Violation of safety laws, regulations, or guidelines.
 20. Use of position, City property, or confidential City information for personal gain; or for the gain of others.

8.5 FORMS OF DISCIPLINARY ACTION

Disciplinary action may take any of the following forms, in any order, depending upon the seriousness of the infraction, the Employee's previous work history and longevity, and other relevant factors. Progressive discipline shall be applied only where the Supervisor believes that the potential for improvement and curative behavior is possible.

- A. Oral reprimand: An oral reprimand is a warning rather than a punitive action, and is designed to prevent the Employee from being placed in a position where formal discipline must be used. A Supervisor may make a brief note documenting the conversation and will retain the note for future reference. Documentation of an oral reprimand will not be placed in the Employee's personnel file.
- B. Written reprimand: A written reprimand is also intended to be a warning procedure; however, the written reprimand also serves to place the Employee on official notice that future abuse will result in a more severe form of disciplinary action. As such, the written reprimand will be placed in the Employee's personnel file.
- C. Suspension without pay: Suspension without pay is a form of discipline which is usually taken either after a written reprimand has failed to correct the performance deficiency or when the severity of the violation is such that it warrants a suspension without pay.
- D. Disciplinary probation: Disciplinary probation is a form of discipline which is usually taken when a written reprimand or suspension without pay have failed to correct the performance deficiency or when the severity of the violation is such that it warrants it. Disciplinary probation consists of placing an Employee back on



probationary status. The Employee loses regular status, and must bring his/her performance up to a "Standard" rating in order to regain regular Employee status.

- E. Salary reduction: A reduction in salary is the reduction of the Employee's salary to a lower step on the salary range to which his/her position is assigned. This form of discipline may be used for any length of time that the City Administrator deems appropriate, and is generally but not exclusively used when it is advantageous to have the Employee on the job but the seriousness of the violation or performance problem warrants more disciplinary action than a written reprimand.
- F. Involuntary demotion: A demotion to a lower classification may be used as a form of disciplinary action, when dismissal is not warranted, or when the Supervisor feels that the Employee has the potential for correcting the misconduct. When demotion to a lower classification occurs, the salary of the Employee will be equal to, or less than, the Employee's present salary, at the discretion of the Supervisor and City Administrator.
- G. Dismissal: Dismissal from City service may be necessary after other attempts to correct the performance deficiencies have failed or when the seriousness of the infraction is such that dismissal is warranted.

8.6 ADMINISTRATION OF DISCIPLINE

The following is a list of positions with the authority to impose discipline

1. The Employee's Supervisor may administer an oral reprimand and a written reprimand and recommend other levels of discipline.
2. Consistent with 8.7 below, the City Administrator will review and approve all recommendations for suspensions without pay, disciplinary probations, reductions in salary, involuntary demotions, and dismissals from City service.

8.7 INFORMAL REVIEW

A regular, full-time Employee shall have the right to an Informal Review regarding disciplinary actions consisting of suspension without pay, disciplinary probation, salary reduction, involuntary demotion, or dismissal from City employment within 5 working days after receiving notification of the proposed disciplinary action.

The following steps shall be followed in submitting and processing a request for an Informal Review. For purposes of this Informal Review process, the City Administrator shall be deemed to be the Department Head for all Employees. The Chief of Police shall be deemed to be the Department Head for the Police Department; the Fire Chief shall be deemed the Department Head for the Fire Department; and the Community Development Director shall be deemed the Department Head for the Community Development Department.



- Step 1: In disciplinary actions imposed by the Department Heads, the affected Employee may submit a request for an Informal Review of the disciplinary action to the City Administrator within five (5) working days after receiving notification of the proposed disciplinary action. The Department Head shall review the Employee's request for an Informal Review and provide to the City Administrator any and all relevant information regarding the proposed disciplinary action within three (3) days after notification of the Employee's request for an Informal Review.
- Step 2: The City Administrator shall meet with the affected Employee and the Department Head to review the reasons for the proposed disciplinary action and any relevant information the Employee desires to submit in connection with the disciplinary action or the information and/or events upon which the proposed disciplinary action is based.
- Step 3: Upon the conclusion of the Informal Review, the City Administrator shall prepare his decision in writing upholding, modifying, or rescinding the proposed disciplinary action.
- Step 4: If the affected Employee is dissatisfied with the decision of the City Administrator, then the Employee may request that the City Administrator's decision be informally reviewed by the Mayor within five (5) working days after receiving the City Administrator's decision. The Mayor shall meet with the City Administrator and the Employee, review the Employee's written material and relevant information regarding the proposed disciplinary action and provide his written decision within three (3) days after the meeting. The decision of the Mayor shall be final and binding.

In the event of disciplinary action proposed by the City Administrator acting in the capacity of the Department Head, such proposed disciplinary action shall be reviewed directly by the Mayor consistent with Step 4, above. The decision of the Mayor shall be final and binding.

If the request for an Informal Review is not initiated within the time limits established by this Section, then the right for an Informal Review shall be deemed to be waived. Any disciplinary action not taken to the next step of the Informal Review procedure within the time limits established by this Section shall be considered settled on the basis of the last decision made.

The time limits prescribed in this Section for the initiation and completion of the steps of the Informal Review procedure may be extended for a reasonable amount of time by the reviewing City Employee.



APPENDIX A

MEDICAL INSURANCE PLAN

CITY STAFF HEALTH REIMBURSEMENT ARRANGEMENT ANNUAL ROLLOVER AND PORTABILITY POLICY

Regence BlueShield of Idaho has been selected by the City of Sun Valley to provide health insurance for its full-time regular employees (at least thirty (30) hours or more per week). The Health insurance plan includes a Health Reimbursement Arrangement (HRA) program. Individual employee HRA accounts are established and annually the city appropriates funds to the HRA account to help pay for employee deductibles.

It is the City's policy that at the end of each fiscal year, any unused appropriation funds in an individual's HRA account may be rolled over into the next fiscal year. The maximum amount that may be rolled over each year is seventy percent (70%) of the remaining funds. The funds may be used in subsequent years for medical costs as authorized by Regence BlueShield.

Vesting of rollover funds occurs at the completion of three (3) years of full-time employment. Rollover funds will at that time become available as a profitability payment to an employee should the employee leave City employment. After year three (3), an employee, upon employment termination, will be provided a payment of up to \$1,500 of any vested rollover funds. At the end of five (5) or more years of employment, an employee will be entitled to payment of up to \$5,000 of any vested rollover funds.

An employee receiving a profitability payment may choose to either have the payment made as income and, therefore, subject to all applicable payroll taxes and payroll benefits or the employee may select that a payment or payments be made directly for another health insurance plan.

MAYOR & COUNCIL HRA PROGRAM

The Mayor and Council are full-time employees of the City and are eligible to receive health insurance benefits equal to those provided to other employees. In addition, the Mayor & Council may select to provide for their health insurance coverage through an existing health insurance program of their own or through a spouse's health insurance program. If one of these options is selected, the Mayor and/or Councilperson(s) may still participate in the City's Health Reimbursement Arrangement (HRA) program as follows:¹

¹The Mayor and Council are considered a unique class under this policy and, therefore, other employees are not eligible for this HRA Program.



1. The City will establish an individual HRA account for the Mayor and/or Councilperson and contribute \$1,217.40 per month to the account. The maximum total contribution over a twelve month period is \$14,608.80 and the ²period of time will be from January 1 through December 31²
2. The HRA account may be used by the Mayor and/or Councilperson(s) for the reimbursement of their health insurance premiums and/or deductibles including all dependents on the program.
3. The Mayor and/or Councilperson(s) must present to ISC, the City's HRA account managers, acceptable proof of health insurance premium payment in order to be reimbursed (i.e. payroll documentation or premium invoice).
4. The Mayor and/or Councilperson(s) must present to ISC acceptable proof of deductible payment in order to be reimbursed (i.e. doctor's receipt or Explanation of Benefits (EOB) from health insurance provider.)
5. ISC will be responsible for verifying receipts and payroll deduction documentation and will make timely reimbursements for all eligible health insurance premium costs and deductibles. and deductibles.

² The monthly and maximum annual City Contribution to the HRA accounts is calculated based upon the current per employee and dependent *premium costs* charged by Regence BlueShield of Idaho (Health Insurance) and MetLife (Dental Insurance) for City employees and the City's share of paid deductibles in the current 2004/05 health insurance policy.

Dental	Health
	Employee: \$ 263.00/month
\$ 25.80	Spouse: \$ 316.00/month
\$ 23.70	Children: \$ 354.00/month (or \$118/month/child up to 3 children) \$ 30.00
Total per month:	\$ 933.00
\$ 84.40 (family)	
\$1,012.80	Total per year: \$ 11,196.00
Plus: City Deductible Payment:	\$ 2,400.00
Total Annual HRA Account Contribution:	\$ 14, 608.80
Total Monthly HRA Account Contribution:	\$ 1,217.40



6. The maximum total reimbursement for the twelve-month HRA period is \$14,608.80.
7. At the end of the twelve-month period, or at anytime that the elected term of the Mayor and/or Councilperson(s) should end, any remaining funds in the Mayor's or Councilperson(s) HRA account will revert back to the City and will be forfeited by the Mayor and/or Councilperson(s) if they do not have outstanding receipts to withdraw those funds. There is no rollover provision provided in this program.



APPENDIX B

FEDERAL FAMILY AND MEDICAL LEAVE ACT OF 1993 (FMLA)

Rights and obligations, which are not specifically set forth below, are set forth in the Department of Labor regulations implementing the Federal Family and Medical Leave Act of 1993 (FMLA). Unless otherwise provided by this article, "Leave" under this article shall mean leave pursuant to the FMLA.

A. Definitions

1. "12-month period" means a rolling 12-month period measured backward from the date leave is taken and continuous with each additional leave day taken.
2. "Child" means a child under the age of 18 years of age, or 18 years of age or older who is incapable of self-care because of a mental or physical disability.
An Employee's child is one for whom the Employee has actual day-to-day responsibility for care and includes a biological, adopted, foster, or stepchild.
3. A child is "incapable of self-care" if he/she requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living or instrumental activities of daily living, such as caring for grooming and hygiene, bathing, dressing, and eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, etc.
4. "Parent" means the biological parent or an Employee or an individual who stands or stood *in loco parentis* (in place of a parent) to an Employee when the Employee was a child. This term does not include parents-in-law.
5. "Spouse" means a husband or wife as defined or recognized under Idaho State law for purposes of marriage.
6. "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:
 - a. Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, or perform other regular daily activities due to the serious health condition, treatment involved, or recovery there from); or
 - b. Continuing treatment by a health care provider: A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:



- i) A period of incapacity (i.e., inability to work, or perform other regular daily activities due to serious health condition of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
- ii) Treatment two or more times by a health care provider, by a nurse or physicians assistant under direct supervision by a health care provider, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral, by a health care provider; or
- iii) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider. This includes, for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over the counter, and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.

Any period of incapacity due to pregnancy or for prenatal care.

Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

- i) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
- ii) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
- i) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). Absences for such incapacity qualify for leave even if the absence lasts only one day.

A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. The Employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.

Any period of absence to receive multiple treatments (including any period of recovery there from) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment.

7. "Health Care Provider" means:

- 1) A doctor of medicine or osteopathy who is authorized to practice medicine or



surgery by the State of Idaho;

- 2) Individuals duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treats or supervises treatment of a serious health condition. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of Manual manipulation of the spine to correct a subluxation as demonstrated by X-rays to exist) authorized to practice in Idaho and performing within the scope of their practice as defined under State law;
- 2) Nurse practitioners and nurse-midwives and clinical social workers who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law;
- 3) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; and
- 4) Any health care provider from whom an employer or group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

B. Reasons for Leave

Leave is only permitted for the following reasons:

- 1) The birth of a child or to care for a newborn of an Employee;
- 2) The placement of a child with an Employee in connection with the adoption or foster care of a child;
- 3) Leave to care for a child, parent, or a spouse who has a serious health condition; or
- 4) Leave because of a serious health condition that makes the Employee unable to perform the functions of his/her position.

C. Employee's Rights to Leave:

An Employee is eligible for leave if the Employee:

- 1) Has been employed for at least 12 months; and
- 2) Has been employed for at least 1,250 hours during the 12 month period immediately preceding the commencement of the leave.



D. Amount of Leave:

Eligible Employees are entitled to a total of 12 workweeks of leave during any 12-month period.

E. Minimum Duration of Leave

If leave is requested for the birth, adoption, or foster care placement of a child of the Employee, leave must be concluded within one year of the birth or placement of the child. In addition, the basic minimum duration of such leave is two weeks. However, an Employee is entitled to leave for one of these purposes (e.g., bonding with a newborn) for at least one day, but less than two weeks duration on any two occasions. If leave is requested to care for a child, parent, spouse or the Employee him/herself with a serious health condition, there is no minimum amount of leave that must be taken. However, the notice and medical certification provisions of this policy must be complied with.

1. Spouses Both Employed by the City

In any case in which a husband and wife both employed by the City are entitled to leave, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12 month period if leave is taken for the birth or placement for adoption or foster care of the Employees' child (i.e., bonding leave). This limitation does not apply to any other type of leave under this policy.

F. Employee Benefits While on Leave:

Leave under this policy is unpaid; however, the Employee may use sick, vacation, and/or compensatory time as determined by the City. While on leave, Employees will continue to be covered by the City's group health insurance to the same extent that coverage is provided while the Employee is on the job.

If an Employee fails to return to work after his/her leave entitlement has been exhausted or expires, the City shall have the right to recover its share of health plan premiums for the entire period, unless the Employee does not return because of the continuation, recurrence, or onset of a serious health condition of the Employee or his/her family member which would entitle the Employee to a leave, or because of circumstances beyond the Employee's control. The City shall have the right to recover premiums through deduction from any sums due the City (e.g., unpaid, wages, vacation pay, etc.).

G. Substitution of Paid Accrued Leaves:

While on leave under this policy, as set forth herein, an Employee may elect to concurrently use paid accrued leaves. Similarly, the City may require an Employee to concurrently use paid accrued leave after requesting FMLA leave, and may also require



an Employee to use Family and Medical Care Leave concurrently with a non-FMLA leave which is FMLA qualifying.

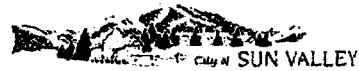
1. Employee's Right to Use Paid Accrued Leaves Concurrently With Family Leave: Where an Employee has earned or accrued paid vacation, administrative leave, compensatory time, or sick leave, that paid leave may be substituted for all or part of any otherwise unpaid leave under this policy.
2. As for sick leave, an Employee is entitled to use sick leave concurrently with leave under this policy if:
 - a) The leave is for the Employee's own serious health condition; or
 - b) The leave is needed to care for a parent, spouse, or child with a serious health condition, and would be permitted as sick leave under the City's sick leave policy.
3. The City's Right to Require an Employee to Use Paid Leave When Using FMLA Leave: Employees must exhaust their accrued leaves concurrently with FMLA leave to the same extent that Employees have the right to use their accrued leaves concurrently with FMLA leave, with two exceptions:
 - a) Employees are not required to use accrued compensatory time earned in lieu of overtime earned pursuant to the Fair Labor Standards Act; and
 - b) Employees will only be required to use sick leave concurrently with FMLA leave if the leave is for the Employee's own serious health condition.
4. The City's Right to Require an Employee to Exhaust FMLA Leave Concurrently With Other Leaves: If an Employee takes a leave of absence for any reason which is FMLA qualifying, the City may designate that non-FMLA leave as running concurrently with the Employee's 12-week FMLA leave entitlement.
5. City's and Employee's Rights If an Employee Requests Accrued Leave Without Mentioning the FMLA: If an Employee requests to utilize accrued vacation leave or other accrued time off without reference to a FMLA qualifying purpose, the City may not ask the Employee if the leave is for a FMLA qualifying purpose. However, if the City denies the Employee's request and the Employee provides information that the requested time off is for a FMLA qualifying purpose, the City may inquire further into the reason for the absence. If the reason is FMLA qualifying, the City may require the Employee to exhaust accrued leave as described above.
6. Medical Certification: Employees who request leave for their own serious health condition or to care for a child, parent, or a spouse who has a serious health condition, must provide written certification from the health care provider of the individual requiring care if requested by the City.



If the leave is requested because of the Employee's own serious health condition, the certification must include a statement that the Employee is unable to work at all or is unable to perform the essential functions of his/her position.

- a) Time to Provide a Certification: When an Employee's leave is foreseeable, and at least 30 days notice has been provided, if a medical certification is requested, the Employee must provide it before the leave begins. When this is not possible, the Employee must provide the requested certification to the City within the time frame requested by the City (which must allow at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the Employee's diligent, good faith efforts.
 - b) Consequences for Failure to Provide an Adequate or Timely Certification: If an Employee provides an incomplete medical certification, the Employee will be given a reasonable opportunity to cure any such deficiency. However, if an Employee fails to provide a medical certification within the time frame established by this policy, the City may delay the taking of FMLA leave until the required certification is provided.
 - c) Recertification: The City may require a medical opinion of a second health care provider chosen and paid for by the City. If the second opinion is different from the first, the City may require the opinion of a third party provider, jointly approved by the City and the Employee, but paid for by the City. The opinion of the third provider will be binding. An Employee may request a copy of the health care provider's opinions when there is a recertification.
7. Intermittent Leave or Leave on a Reduced Leave Schedule: If an Employee requests leave intermittently (a few days or hours at a time) or on a reduced leave schedule to care for an immediate family member with a serious health condition, the Employee must provide medical certification that such leave is medically necessary. "Medically necessary" means that there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.

Employee Notice of Leave: Although the City recognizes that emergencies arise which may require Employees to request immediate leave, Employees are requested to give as much notice as possible of their need for leave. If leave is foreseeable, at least 30 days notice is required. In addition, if an Employee knows that he/she will need leave in the future, but does not know the exact date(s) (e.g., for the birth of a child or to take care of a newborn) the Employee shall inform his/her Supervisor as soon as possible that such leave will be needed. Such notice may be given orally. If the City determines that an Employee's notice may delay the granting of the leave until it can, in its discretion, adequately cover the position with a substitute.



Right to Reinstatement: Upon expiration of leave, an Employee is entitled to be reinstated to the position of employment held when the leave commenced, or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Employees have no greater rights to reinstatement, benefits and other conditions of employment than if the Employee had been continuously employed during the FMLA period.

Reinstatement Upon Return from Leave: If a definite date of reinstatement has been agreed upon, at the beginning of the leave, the Employee will be reinstated on the date agreed upon. If the reinstatement date differs from the original agreement of the Employee and the City, the Employee will be reinstated within two business days, where feasible, after the Employee notifies the employer of his/her readiness to return.

Employee's Obligation to Periodically Report on His/Her Condition: Employees may be required to periodically report on their status and intent to return to work. This will help to avoid any delays to reinstatement when the Employee is ready to return.

Fitness for Duty Certification: As a condition of reinstatement of an Employee whose leave was due to the Employee's own serious health condition, which made the Employee unable to perform his/her job, the Employee must obtain fitness for duty clearance from his/her health care provider that the Employee is able to resume such work. Subsequent to obtaining such certification from his/her own health care provider, the Employee must present this certification to the City physician who will issue a return to work certification. Failure to provide such certification will result in denial of reinstatement.

Reinstatement of "Key Employees": The City may deny reinstatement to a "key" Employee (i.e., an Employee who is among the highest paid 10% of all Employees of the City within 75 miles of the worksite) if such denial is necessary to prevent substantial economic cost to the operations of the City, and the Employee is notified of the City's intent to deny reinstatement on such basis at the time the employer determines that such injury would occur.

Required Forms: Employees must fill out or provide the following applicable forms in connection with leave under this policy. These forms should be submitted to the Employee's Supervisor, who will forward the request to the City Administrator's Office. Employees must complete a "Request for Family or Medical Leave Form" prepared by the City. NOTE: EMPLOYEES WILL RECEIVE A RESPONSE TO THEIR REQUEST FROM THE CITY, WHICH WILL SET FORTH CERTAIN CONDITIONS OF THE LEAVE. Employees must also turn in a Medical certification – either for the Employee's own serious health condition or for the serious health condition of a child, parent, or spouse, and must have on file an authorization for payroll deductions for benefit plan coverage continuation.



APPENDIX C

LIFE INSURANCE PROGRAM

United Heritage has been selected by the City of Sun Valley to provide life insurance for its full-time employees. Coverage for this insurance is provided by the City of Sun Valley and at no cost to employees. The amount of the life insurance provided is in the amount of \$50,000 per employee, however, the amount of the life insurance provided is reduced according to age once the employee reaches the age of 65.

EXHIBIT 4
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 4
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

N&H WP/AC

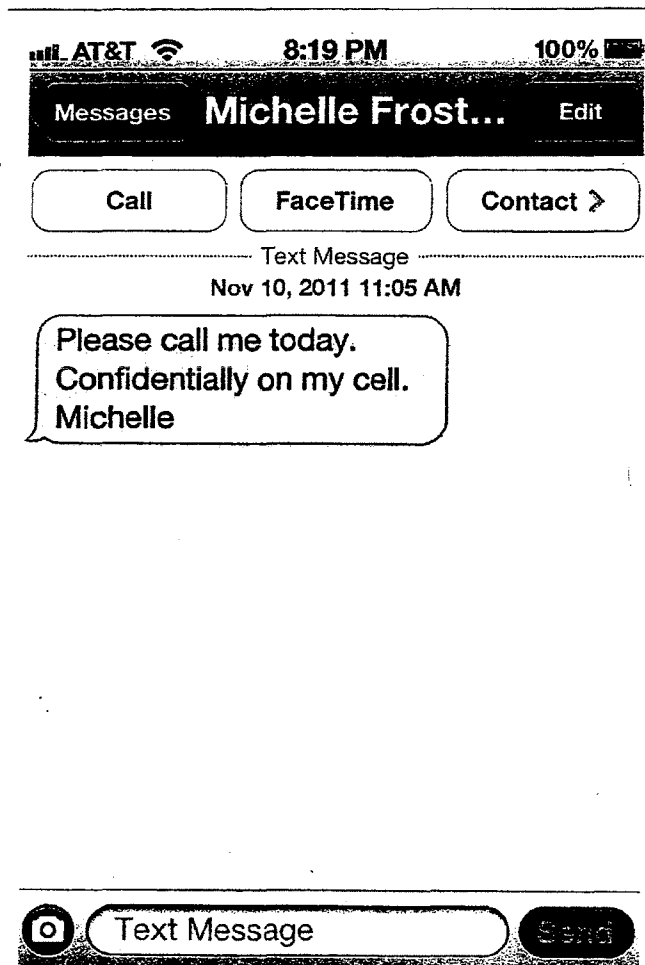


EXHIBIT 5
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 5
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

HAMMER 000086

From: Adam King [mailto:abk@ketchumlegal.com]
Sent: Wednesday, November 16, 2011 7:21 AM
To: Michelle Frostenson
Subject: Re: annual/sick leave

Thanks. Please bring documentation and be prepared to present Thursday.
Adam

// mobile please excuse typos //

On Nov 15, 2011, at 11:48 PM, "Michelle Frostenson" <mfrostenson@svidaho.org> wrote:

Adam,

Tonight I put together the annual leave/sick leave that hasn't been claimed over the past three years for Sharon. It came to 56 days or 448 hours or \$25,984 at her current rate of pay. I have email documentation to back up every one of these days. I have another 20 emails for half days but I didn't include them. I have printed it all off and am mailing it to you tomorrow.

I also have every email she has sent me requesting vacation pay outs or claimed vacation. I will include them and a copy of her leave time report from the accounting system. Sharon also reviews the leave time reports each pay period and signs off on them so she can't say that she didn't know that her vacation wasn't being recorded.

Some of the time off was for on-call fire fighter training and as far as I can tell, she got paid both as city administrator for those hours and as an on-call fire fighter. In order to prove that, time cards will have to be requested from the fire department. All I ever get is a total number of hours to pay out on each fire fighter. During one month where she took a ropes training course for an entire week and didn't claim any time off, she was paid for 32 hours from the fire department. That is an unusually high number of hours for an on-call fire fighter but I can't say for certain the hours were for the ropes course.

*Michelle Frostenson
Treasurer/Finance Manager
City of Sun Valley
208-612-4138 (city office)
208-311-4000 (home office)*

HAMMER 000086

EXHIBIT 6
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 6
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Sent: Tuesday, November 15, 2011 1:00 PM To: 'Adam King'
Subject: Important please read and respond!
Importance: High
Adam,

Is Sharon Hammer going to continue her position as City Administrator during the internal investigation?

If she is, I hereby request a paid leave of absence until this issue is completely resolved, and she is no longer employed by the City of Sun Valley.

I was told when I came forward with the recording of Sharon Hammer's transgression, that the level of her misconduct warranted immediate dismissal from her position. That has apparently been overlooked or flat out ignored.

I was also told that I would be protected, and thanked emphatically for coming forward and "doing the right thing".

You yourself told me that I was a "hero".

I cannot work at City Hall with her and the Mayor joining forces to deny all of her misconduct.

I have not received a single email or call from the Mayor asking me how I am doing, or giving me any kind of a status update. Staff has been cold and yesterday Sharon talked with several staff one on one to garner support for her "cause". Diane Shay, who was in complete support of exposing Sharon's unethical behavior leading up to this, came out of her office crying yesterday after a "closed door session" with a complete change of heart regarding Sharon's termination. Sharon Hammer spoke to everyone in the office yesterday but me. Sharon has bullied and harassed me for the past 3 years. The City has become a very hostile and toxic work environment. This current arrangement is intolerable. After all of the allegations against Sharon, AND the recording of her wrongdoing, she CONTINUES TO WORK at the City, with access to each and every City document (even the ones in question!).....
Sharon still runs the show.

This entire debacle reeks of dishonesty and corruption. I find the way this has been handled to be unacceptable, and I will be forwarding this email to all Council members and Council Elect unless you provide me with a very good reason not to.

Sincerely,

Kelly Ek, CMC
City Clerk
City of Sun Valley
208.622.4438 ext. 19

EXHIBIT 7
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 7
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

N&H WP/AC

To: Kelly Ek, City Clerk, City of Sun Valley

From: Dewayne Briscoe, Nils Ribi, Bob Youngman

Date: November 10, 2011

Re: Special Council Meeting

We wish to call a Special Meeting of the Sun Valley City Council on Friday November 11, 2011 at 2:00 pm, pursuant to Idaho Code 50-706 for the purpose of an Executive Session under Idaho Code section 67-2345-1 (b).

EXHIBIT 8
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

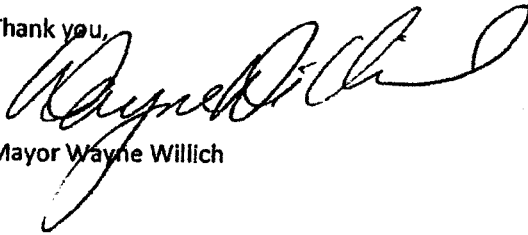
EXHIBIT 8
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

November 18, 2011

Dear Sharon:

Effective immediately you are being placed on paid administrative leave until further notice from your position as City Administrator and paid on-call firefighter/EMT. Please deliver all City of Sun Valley property in your possession to City Hall immediately, including but not limited to cell phones, keys, iPads, computers, computer files/computerized records, papers, telephones, pagers, fire equipment, EMT equipment, and any other property in your possession which belongs to the City of Sun Valley. This is not a disciplinary action.

Thank you,

A handwritten signature in black ink, appearing to read "Wayne Willich", written over the printed name.

Mayor Wayne Willich

EXHIBIT 9
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 9
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

HAMMER 000191

From: sharonrhammer <sharonrhammer@aol.com>

To: wwillich <wwillich@svidaho.org>

Subject: Newspaper comments re: administrative leave

Date: Fri, Dec 2, 2011 10:56 am

Mayor: In each of the last two newspaper articles on the investigation and lawsuit the newspaper has stated that I was placed on administrative leave pending investigation of me for improper use or misappropriation of city funds. In Wednesday's paper they quoted Council Ribb saying that is the reason I was put on administrative leave. This is exactly the concern I raised to you regarding placing me on administrative leave and the potential damage to my professional reputation. You told me specifically that I was being placed on administrative leave not because of anything that I had done wrong but to protect me from Councilman Ribb.

Jim has spoken to the newspaper and tried to get this point across but they have not reported it accurately.

I am asking you to PLEASE contact the newspaper and explain to them why I was placed on administrative leave. The potential permanent damage to my professional reputation is of great concern to me.

Thank you,
Sharon Hammer

EXHIBIT 10
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 10
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Wednesday, November 30, 2011

Sun Valley councilman responds to lawsuit

Ribi denies claims made by city administrator

By GREG MOORE
Express Staff Writer

An internal investigation of Sun Valley City Administrator Sharon Hammer's "possible misuse of public funds and equipment" was the cause of her being placed on administrative leave two weeks ago, according to an affidavit filed in Blaine County 5th District Court by Sun Valley City Councilman Nils Ribi.

The affidavit is part of a rapidly developing spat between Ribi and Hammer that has produced allegations of dangerous mental instability against Ribi and defamation against Hammer.

Ribi's affidavit was filed Nov. 23 in opposition to a motion for a temporary restraining order seeking an end to Hammer's suspension and to the investigation. The motion and a \$1 million lawsuit against the city were filed on Nov. 21 by attorney Jim Donoval, a Republican candidate for state Senate last year and Hammer's husband. The suit alleges that Ribi physically threatened Hammer and tried to get her fired in retaliation for complaining about his behavior.

In his affidavit, Ribi denied those accusations.

He also stated that City Treasurer Michelle Frostenson told him (at an unspecified date) that she had "uncovered evidence that indicated possible wrong doing by the Plaintiff." He said three council members set an executive session to hear that evidence on Nov. 11. Hammer was placed on administrative leave by Mayor Wayne Willich on Nov. 18.

"...[T]he Mayor and Council had reason to believe that the Plaintiff may have committed serious misconduct, including possible criminal violations of statutes dealing with the misuse of public funds and falsification of public records," the affidavit states. "... Because the Plaintiff, in the position of City Administrator, has unfettered access to the records of the City of Sun Valley, including records which may be essential to a determination of whether or not improprieties, misconduct and/or criminal action have been committed by the Plaintiff, it was and is essential that she be placed on administrative leave and ordered not to be in Sun Valley City [H]all until appropriate investigative measures have been completed."

The affidavit states that the administrative leave is not a disciplinary action.

The affidavit does not specifically state the nature of Hammer's alleged misuse of public funds. However, a letter attached to it allegedly written by Donoval on Nov. 12 to Mayor Wayne Willich and copied to City Council members, states that "the two main allegations of impropriety described to Ms. Hammer was (sic) that Ms. Hammer somehow violated City of Sun Valley vacation pay and use of City of Sun Valley automobile policies." The letter also states that "Ms. Hammer un-categorically (sic) denies any such allegations."

The letter also states that "[s]hould the allegations and proceedings against Ms. Hammer proceed any further, Ms. Hammer will present multiple public officials, Sun Valley employees, and private individuals who have all disclosed to Ms. Hammer that Mr. Ribi has a long history of mental and emotional illness, is verbally abusive, is otherwise unstable, and is most likely emotionally incompetent to assume the public position that he now possesses or any public position he seeks in the future."

Another letter attached to Ribi's affidavit allegedly written by Donoval on Nov. 16 states that "[t]here is no question that due to Mr. Ribi's tenuous emotional health that Mr. Ribi is dangerous to City of Sun Valley employees, and in particular to Ms. Hammer."

Ribi has hired Hailey attorney Keith Roark to address allegedly defamatory statements made by Donoval. In a letter to Donoval dated Nov. 21, Roark stated that "Mr. Ribi has

never been diagnosed [with] or treated for any emotional or psychological illness. ..." The letter demands that Donoval retract his allegations of mental instability on Ribi's part in letters sent to the recipients of his Nov. 12 and Nov. 16 letters.

Roark's letter points out that Idaho law precludes the filing of a lawsuit in court against a municipality until a tort claim has been filed with the municipality. Roark contends that no such claim was filed.

"Should you choose to file your 'complaint,' we are prepare[d] to have it dismissed summarily and will bring an appropriate action for malicious prosecution in addition to our claims for defamation and false light invasion of privacy", in his letter.

In an email to the Idaho Mountain Express, Donoval said a hearing on his motion for a temporary restraining order, originally scheduled for Nov. 23, would be rescheduled for sometime this week.

Greg Moore: gmoore@mtexpress.com

EXHIBIT 11
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 11
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Attorneys for Defendant Nils Ribi

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

Case No. CV-11-928

VS.

**) AFFIDAVIT OF NILS RIBI IN
) OPPOSITION TO MOTION FOR
) TEMPORARY RESTRAINING ORDER**

NILS RIBI, and individual; THE CITY OF SUN VALLEY, and Idaho municipal Corporation; and, ADAM KING, and Individual.

Defendant.

STATE OF IDAHO,)

) SS.

County of Blaine.)

NILS RIBI, being sworn upon oath, deposes and states as follows:

1. I am a resident of the State of Idaho, County of Blaine and make the averments contained herein of my own, personal knowledge.

2. I have read and attempted to understand the Complaint, Motion for Temporary Restraining Order and Affidavits filed in support thereof.

3. Although the form of the pleadings in this case make it difficult if not impossible to understand with precision the matters set forth therein, your affiant can make some response.

AFFIDAVIT OF NILS RIBI IN OPPOSITION
TO MOTION FOR TEMPORARY
RESTRAINING ORDER - 1

THE ROARK LAW FIRM
409 North Main Street
Healey, Idaho 83426
(208) 785-2427 Fax (208) 785-2428

HAMMER 000813

1 4. At no time have I threatened by word or conduct to do any violent or physical act
2 against the Plaintiff in this matter.

3 5. At no time until after the end of City Council meeting of November 11, 2011 did
4 anyone, including the Mayor, City Attorney or my fellow City Council members advise me
5 that the Plaintiff had complained to them about my "threatening" behavior toward her.

6
7 6. I was completely unaware of any potentially improper or illegal activities the Plaintiff
8 had engaged in while employed by the City of Sun Valley until it was brought to my
9 attention by Michelle Frostenson, the City Treasurer that she had uncovered evidence that
10 indicated possible wrong doing by the Plaintiff.

11 7. I did not "call" a special meeting of the Sun Valley City Council on November 11,
12 2011. The meeting in question was called, pursuant to Idaho Code 50-706, by three council
13 members for the purpose of holding an executive session to hear evidence uncovered by City
14 Treasurer, Michelle Frostenson. A motion to go into executive session was made and passed
15 by all three members of the council in attendance.

16 8. During the course of the executive session matters were presented to the council that
17 caused all members serious concern about possible misuse of public funds and equipment by
18 the Plaintiff.

19
20 9. Following the City Council meeting and executive session of November 14, 2011 I
21 and the other council members learned that a Sun Valley City Police officer had listened into
22 the executive session and then reported to the Plaintiff who, notwithstanding her clear
23
24

AFFIDAVIT OF NILS RIBI IN OPPOSITION
TO MOTION FOR TEMPORARY
RESTRAINING ORDER - 2

THE ROARK LAW FIRM
409 North Main Street
Boiler Room 82533
(208) 788-2121

HAMMER 000814

1 knowledge of the impropriety of such intrusion, proceeded to question the officer about what
2 had gone on in that closed meeting from which she had been intentionally excluded.

3 10. By his letter of November 18, 2011, the Mayor, not the City Council or myself,
4 placed the Plaintiff on administrative leave. At and since the time of the Mayor's letter, the
5 Mayor and Council had reason to believe that the Plaintiff may have committed serious
6 misconduct, including possible criminal violations of statutes dealing with the misuse of
7 public funds and falsification of public records by the Plaintiff. Because the Plaintiff, in the
8 position of City Administrator, has unfettered access to the records of the City of Sun Valley,
9 including records which may be essential to a determination of whether or not improprieties,
10 misconduct and/or criminal action have been committed by the Plaintiff, it was and is
11 essential that she be placed on administrative leave and ordered not to be in Sun Valley City
12 hall until appropriate investigative measures have been completed.

13
14 11. The administrative leave is not a disciplinary action but is intended to protect the city,
15 its officer and employees while an investigation into the alleged improprieties, misconduct
16 and/or illegal activities is being conducted.

17 12. At no time have I ever demanded or even so much as suggested that the Plaintiff be
18 terminated or placed on administrative leave or disciplined in any manner for reporting
19 anything to anyone about me. Indeed, I did not until after the meeting of November 11, 2011
20 even become aware of any alleged report to the Mayor or City Attorney by the Plaintiff
21 regarding my alleged conduct or behavior.

22 13. The Plaintiff's attorney, who is also her husband, has made a series of threats to me,
23 the Mayor, the City Attorney and my wife that demonstrate that his action in filing this case
24

AFFIDAVIT OF NILS RIBE IN OPPOSITION
TO MOTION FOR TEMPORARY
RESTRAINING ORDER - 3

THE ROARK LAW FIRM
409 North Main Street
Hailey, Idaho 83433
(208) 766-2427 Fax (208) 766-2418

1 is designed to effect a political result and extract a large sum of money from the City. In
2 support of this averment I have attached hereto and incorporate by reference herein the
3 following, un-redacted exhibits:

- 4 a. Letter of November 12, 2011, James Donoval to Wayne Willich.
5
6 b. Letter of November 16, 2011, James Donoval to Wayne Willich with
7 attachments.
8
9 c. Undated letter of November 18, James Donoval to Patricia Brolin-Ribi (Wife
10 of Affiant).
11
12 d. Letter of November 20, 2011 to James Donoval from R. Keith Roark

13 14. I do not now and never have had any "vendetta" against the Plaintiff and my actions
14 in this matter have all been guided by and based upon my concerns about possible improper
15 and/or illegal conduct by the Plaintiff while acting in the course of her employment with the
16 City of Sun Valley. To my knowledge, the Plaintiff has not been deprived of any
17 compensation or benefit to which she would be otherwise entitled and no final action will be
18 taken until a full investigation, including opportunity for the Plaintiff to explain her activities,
19 has been completed.

20 15. Both the City Clerk and City Treasurer of the City of Sun Valley have also been
21 placed on administrative leave after informing the Mayor that they would be "afraid" to
22 return to work if Sharon Hammer is still functioning in the position of City Administrator.

23 16. The naming of Adam King, Sun Valley City Attorney, as a Defendant in this action is
24 an obvious attempt to place the City at a disadvantage in defending against the claims for

AFFIDAVIT OF NILS RIBI IN OPPOSITION
TO MOTION FOR TEMPORARY
RESTRAINING ORDER - 4

THE ROARK LAW FIRM
409 North Main Street
Hailey, Idaho 83423
(208) 788-2427 Fax: (208) 788-3918

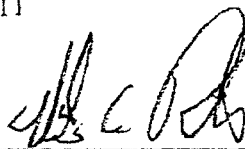
1 injunctive relief by requiring new counsel to be appointed who will not have sufficient time
 2 to prepare for any hearing on an application for temporary restraining order or preliminary
 3 injunction.

4 17. I am also concerned that the Mayor of Sun Valley, who was defeated in his re-
 5 election campaign and who has enjoyed a close personal relationship with the Plaintiff and
 6 her husband (counsel of record in this matter) is acting to further the interests of the Plaintiff
 7 rather than the interests of the City of Sun Valley by obstructing the efforts of City Attorney
 8 Adam King to enlist the representation of Brad Miller and the Hawley-Troxell law firm in
 9 defense of the city.

10 18. If this Court grants a temporary restraining order or preliminary injunction requiring
 11 the City to rescind the order placing the Plaintiff on administrative leave, the ability of the
 12 Mayor, the City Council and others who may have an interest in determining whether or not
 13 possible improper and/or illegal conduct by the Plaintiff has occurred will be compromised.
 14

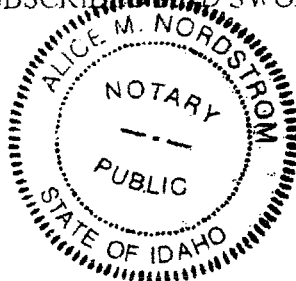
15 FURTHER YOUR AFFIANT SAYETH NOT.

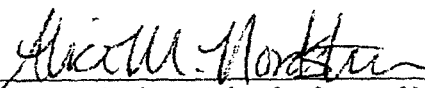
16 Dated this 23rd day of November, 2011

17 

18 Nils Ribi

19 SUBSCRIBED AND SWORN to before me this 23 day of November, 2011.




 Notary Public in and for the State of Idaho,
 residing at Hailey, therein.
 My Commission expires 2/26/15.

AFFIDAVIT OF NILS RIBI IN OPPOSITION
 TO MOTION FOR TEMPORARY
 RESTRAINING ORDER - 5

THE ROARK LAW FIRM
 409 North Main Street
 Hailey, Idaho 83333
 (208) 788-2427 Fax (208) 788-2428

EXHIBIT 12
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 12
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

SHARON R. HAMMER

Sun Valley City Administrator

4325 Fairway Nine Condos

PO Box 1499

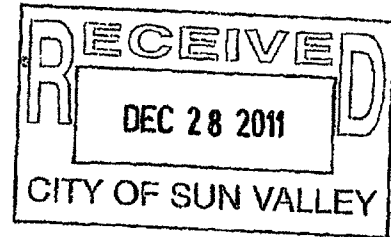
Sun Valley, ID 83353

(312) 965-0245

sharonrhammer@aol.com

December 28, 2011

Sun Valley City Clerk Kelly Ek
City Of Sun Valley
PO Box 416
Sun Valley, ID 83353



Re: Sharon R. Hammer v. Kirtlan Naylor, Patti Ball, Mayor Elect Briscoe:

Dear Ms. Ek:

On December 15, 2011, the attached letter was served upon you indicating my intent to file various claims against the City Of Sun Valley, Council Member Nils Ribi, Council Member Robert Youngman, City Attorney Adam King and Finance Manager/Treasurer Michelle Frostenson. Please be advised that this notice adds attorney Kirtlan Naylor, Special Investigator Patti Ball and potentially Mayor Elect DeWayne Briscoe to such notice.

On November 14, 2011, Sun Valley Mayor Wayne Willich ordered that an "independent" Special Investigation would commence, part of which was to investigate allegations made against me by Council Member Ribi and Finance Manager Frostenson. At some point, Mayor Willich appointed Patti Ball to perform the Special Investigation. On November 18, 2011, I was placed on "administrative leave" by Mayor Willich pending the Special Investigation. On November 21, 2011, I filed a cause of action in Blaine County, Idaho (No. CV-2011-928) against Council Member Ribi, the City Of Sun Valley and City Attorney Adam King pursuant to the Idaho Public Employee Protection Act (the "IPPEA Law Suit"). Subsequently, Council Member Youngman was added as a defendant in the IPPEA Law Suit. At some point, attorney Kirtlan Naylor was appointed by ICRMP to defend the City Of Sun Valley and Adam King in the IPPEA Law Suit, and eventually also filed Appearances on behalf of Council Member Ribi and Council Member Youngman in the IPPEA Law Suit.

Subsequent to Attorney Naylor appearing in the IPPEA Law Suit, Attorney Naylor, unilaterally and without any authority from the City Of Sun Valley or Mayor Willich, became involved in and started directing the Special Investigation. And although Special Investigator Ball was to have reported solely to Mayor Willich and perform an "independent" Special Investigation, Special Investigator Ball instead

unilaterally determined, without any authority from the City Of Sun Valley or Mayor Willich, that she would instead report to Attorney Naylor. Subsequent to Special Investigator Patti Ball determining that she would report to Attorney Naylor, Attorney Naylor and Special Investigator Ball began a scheme to seek any and all information about me specifically to find reasons to terminate me, rather than performing an "independent" Special Investigation, as had been Special Investigator Ball's defined role. This has recently been confirmed to me by Mayor Willich. Thereafter, Special Investigator Ball provided Attorney Naylor confidential information regarding myself and the Special Investigation that Attorney Naylor was not entitled to receive as counsel for the City Of Sun Valley, Council Member Ribí, Council Member Youngman and City Attorney King in the IPPEA Law Suit. On multiple occasions my attorney has requested that Attorney Naylor provide a written retainer agreement signed by Mayor Willich specifically authorizing Attorney Naylor to participate in any way in the Special Investigation, but such an agreement has not been produced. In addition, on information and belief, I assert that Special Investigator Ball's employment agreement with Mayor Willich or the City Of Sun Valley (if one exists) does not authorize Special Investigator Ball to either report to, or provide any information related to the Special Investigation to, Attorney Naylor.

Pursuant to the Idaho Statutes Section 6-906, I am providing you with notice of my intention to file multiple tort and other claims against Attorney Naylor and Special Investigator Ball, including, intentional infliction of emotional distress, malicious prosecution, abuse of process, tortious interference with contract, and conspiracy. Please be advised that I would be willing to settle all matters for the same sum as is being sought in the IPPEA Law Suit, namely, \$1 million.

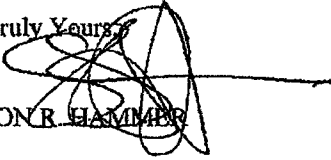
I consider all of the acts of Attorney Naylor exempt from immunity under the Idaho Tort Immunity Act (Idaho Statutes 6-901 et. seq.) as they were done outside his authority as defense counsel in the IPPEA Law Suit, and because they were done with malice towards me in purposefully seeking my termination. I also consider all of the acts of Special Investigator Ball exempt from immunity under the Idaho Tort Immunity Act (Idaho Statutes 6-901 et. seq.) as they were done outside her specific authority to perform an "independent" Special Investigation, because she was not authorized to report to or disclose any information related to the Special Investigation to Attorney Naylor, and because they were done with malice towards me in purposefully seeking my termination.

Finally, at this point, I have been placed back on active duty as the Sun Valley City Administrator, the Special Investigation has been completed and I have been absolved of any violation of Sun Valley policies and procedures or any other act that would warrant either disciplinary actions or termination. Thus far, Mayor Elect Briscoe has remained neutral on any of these matters. However, should any additional disciplinary acts be taken or should my contract with Sun Valley be terminated, I will seek to amend the IPPEA Law Suit to include Mayor Elect Briscoe, Attorney Naylor and Special Investigator Ball as defendants in that matter. Please also be on notice that I will also seek tort damages against Mayor Elect Briscoe for intentional infliction of emotional distress, malicious prosecution, abuse of process, tortious interference with contract, and conspiracy. Finally, I will file a Federal Section 1983 case against the City Of Sun Valley, Mayor Elect Briscoe, Council Member Ribí, Council Member Youngman, City Attorney King, Finance Manager Frostenson, Attorney Naylor and Special Investigator Ball, asserting violations of my constitutional rights to seek redress in the courts, for violation of my due process rights in terminating my contract with Sun Valley for improper reasons, and for violation of my

HAMMER 000226

equal protection rights in terminating my contract but taking no disciplinary action against City Attorney King and Finance Manager Frostenson for their multiple violations of Sun Valley policies and procedures.

Very Truly Yours,


SHARON R. HAMMER
SH:sh

cc: J. Donoval

HAMMER 000226

EXHIBIT 13
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 13
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

☐ FEPA
☐ EEOC
Idaho Human Rights Commission

and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)

Ms. SHARON R. HAMMER

Home Phone (incl. Area Code)

(312) 965-0245

Date of Birth

6/3/61

Street Address

4325 Fairway Nine
PO Box 1499

City, State and ZIP Code

Sun Valley, ID 83353

Sun Valley, ID 83353

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

The City of Sun Valley

No. Employees, Members

30

Phone No. (include Area Code)

(208) 622-4438

Street Address

Sun Valley City Hall

City, State and ZIP Code

Sun Valley, ID 83353

Name

Nils Ribi (City Council Member)

No. Employees, Members

Phone No. (include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)



RACE



COLOR



SEX



RELIGION



NATIONAL ORIGIN



RETALIATION



AGE



DISABILITY

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest



CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

SEE ATTACHED

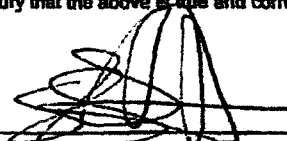
The Complainant has filed a Complaint against the City of Sun Valley & Nils Ribi pursuant to the Idaho Protection of Public Employees Act (Idaho statutes 6-2101 et seq.). The Complainant seeks to bring a hostile work environment claim but first must file a complaint with the IHRC pursuant to Idaho Code 67-5908.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

12/15/11

Date



Charging Party Signature

IDAHO HUMAN RIGHTS COMMISSION
 317 W. MAIN, 2ND FLOOR
 BOISE, IDAHO 83735-0660